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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 242

CHARLES E. GRANT, ASSIGNEE OF JOHN S. MILLER, A BANKRUPT, APPELLANT,

vs.

THE FIRST NATIONAL BANK OF MONMOUTH, ILLINOIS, JOHN J. GLENN, B. T. O. HUBBARD, AND JOHN S. MILLER.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED OCTOBER 16, 1875.

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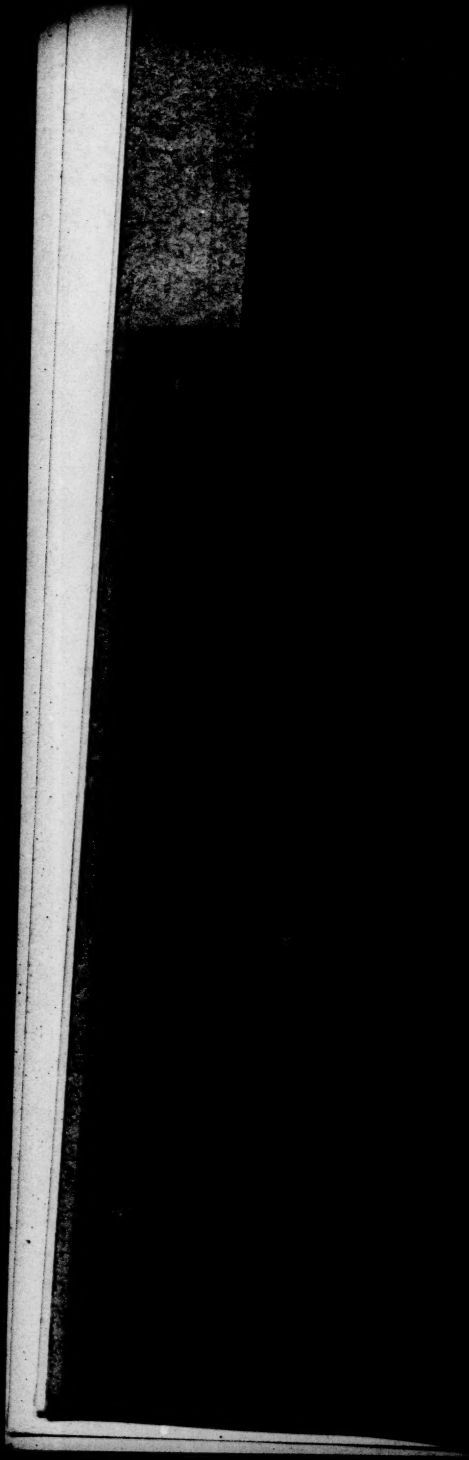

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1 Pleas in the circuit court of the United States for the northern district of Illinois, held at the United States court-rooms, in the city of Chicago, in the district aforesaid, before the judges thereof, on Tuesday, the twenty-seventh day of July, in the year of our Lord one thousand eight hundred and seventy-five, and of our Independence the one hundredth year.

WILLIAM H. BRADLEY, *Clerk.*

CHARLES E. GRANT, ASSIGNEE OF THE ESTATE and effects of John S. Miller, a bankrupt,
vs.
FIRST NATIONAL BANK OF MONMOUTH, B. T. O. Hubbard, John J. Glenn, and John S. Miller. } In chancery.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered that on the 3rd day of July, A. D. 1872, came said complainant, by his solicitors, and filed in the office of the clerk of the circuit court of the United States for said northern district of Illinois, at Chicago, in the district aforesaid, his bond for costs, and at the same time filed his bill of complaint, in said-entitled cause; which said
2 bond and bill are, respectively, in the words and figures following, to wit:

Bond for costs.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

Circuit court. July term, A. D. 1872.

CHARLES E. GRANT, ASSIGNEE IN BANKRUPTCY of John S. Miller, bankrupt,
vs.
THE FIRST NATIONAL BANK OF MONMOUTH, Illinois, John J. Glenn, and B. T. O. Hubbard. } In chancery.

I enter myself security for costs in this cause, and promise to pay all costs which may accrue to the opposite party in this action or to any of the officers of this court, and in default of payment by the plaintiff of any costs ordered or adjudged to be paid by him, hereby agree and stipulate that execution may issue against my property for any costs taxed against him.

Dated this third day of July, A. D. 1872.

EDWARD P. WILLIAMS.

(Endorsed:) Filed July 3d, A. D. 1872. W'm H. Bradley, clerk.

Bill of complaint.

In the circuit court of the United States for the northern district of Illinois.

To the Hon. Thomas Drummond, judge of the circuit court of the
3 United States for the northern district of Illinois, in chancery sitting:

Humbly complaining, sheweth unto your honor your orator, Charles E. Grant, of the county of Knox, in said State, sole assignee of the

estate and effects of John S. Miller, of the county of Warren, State aforesaid, bankrupt, that heretofore, to wit, on the 16th day of September, A. D. 1871, the said John S. Miller, being then insolvent or in contemplation of insolvency, with intent to give a preference to one of his creditors, to wit, the First National Bank of Monmouth, Illinois, and with the intent to defeat and delay the operation of said bankrupt act, did make to John J. Glenn, of the city of Monmouth, county of Warren, and State of Illinois, as trustee for said First National Bank of Monmouth, to secure the payment of a note of $6,500.00 made payable to B. T. O. Hubbard, cashier of said First National Bank of Monmouth, for the use and benefit of said bank, a certain conveyance commonly called a trust-deed, upon the following-described real estate, to wit: Ninety and ninety-two one-hundredths acres, ($90\frac{92}{100}$,) lot two (2) in the subdivision of the southeast quarter of section twenty-four, (24;) also, seventy-nine and forty one-hundredths acres, ($79\frac{40}{100}$,) lot two (2) in the subdivision of the northeast quarter of section twenty-four, (24;) also,
4 eighty (80) acres, west half of the northeast quarter of section twenty-five, (25;) also, seventy-eight (78) acres, east side of the northwest quarter of section twenty-five, (25;) all the above-described lands being in township twelve (12) north of the base-line, and in range two (2) west of the fourth principal meridian, in the town of Spring Grove, county of Warren, and State of Illinois, the same being executed to secure the payment of a certain promissory note bearing even date with said trust-deed, and given by said John S. Miller to B. T. O. Hubbard, cashier, said Hubbard being cashier of the First National Bank of Monmouth, in the county of Warren and State of Illinois, and acting for the use and benefit of said bank, and said note being made payable to him as such cashier ninety days after the date thereof, and to bear interest at the rate of ten per cent. per annum after maturity.

And your orator further represents unto your honor that said last-mentioned promissory note and said deed of trust were not given in consideration of monies at that time received by said John S. Miller, but (save as to the sum of about three hundred dollars hereinafter mentioned) were given to secure the repayment of, to wit, the sum of four thousand dollars originally loaned to said Miller by said First National Bank on, to wit, January twenty-second, (22d,) A. D. 1871, upon the promissory note of said John S. Miller and William J. T. Wallace,
5 bearing date, to wit, January 22d, 1871, to the order of said B. T. O. Hubbard, cashier as aforesaid, ninety days after the date thereof, with interest after maturity at ten per cent. per annum, and which note was at the maturity thereof, to wit, April 22d, 1871, and again in like case on, to wit, July 22d, 1871, renewed for the respective period of ninety days each, on the payment of interest at ten per cent. per annum in advance by said John S. Miller to said First National Bank up to and until, to wit, October 22d, 1871; and said indebtedness further consisted of, to wit, the sum of twenty-two hundred dollars overdraft by said John S. Miller, to wit, before September 16th, 1871, (the precise date your orator does not know and cannot state,) drawn from time to time on said First National Bank by said John S. Miller, and by it paid on said Miller's order; and your orator not knowing the precise date and amount of said overdrafts, or to whom the same were paid, did heretofore on, to wit, December 9th, A. D. 1871, and before the filing of this bill by their attorney, Delos P. Phelps, call upon William Lafferty, president of said First National Bank, at the office of said bank, or information as to the precise date of said original four-thousand-dollar

note, and as to date and amounts, respectively, of said overdrafts of said John S. Miller, but this information was by said president, Wil-
6 liam Lafferty, utterly refused and withheld; wherefore your orator is unable to state the same more definitely than is above herein set forth.

And your orator further shows unto your honor that heretofore, on, to wit, Sept. 16th, A. D. 1871, and within four (4) calendar months next preceding the date of filing petition in bankruptcy against said Miller, as hereinafter stated, said First National Bank did, within said district, viz, at the county of Warren and State of Illinois, having reasonable cause to believe said John S. Miller to be insolvent or acting in contemplation of insolvency, did, with a view to prevent the property of the said John S. Miller from coming to his assignee in bankruptcy, and to prevent the same from being distributed under the act, and with a view to injure, hinder, defraud, and delay the operation and effect of and evade the provisions of this act for the purpose of and with intent to obtain from John S. Miller a fraudulent preference to the extent of, to wit, the four-thousand-dollar note heretofore given to said bank by said John S. Miller, and signed by W'm J. T. Wallace, as above mentioned, and not due, to wit, until October 22d, A. D. 1871, as aforesaid, and the sum of, to wit, twenty-two hundred ($2,200) dollars overdrafts then due and owing to said First National Bank by said John S. Miller, agreed with
7 said Miller that he should give to said First National Bank his promissory note for the sum of sixty-five hundred (6,500) dollars, bearing date September sixteenth, A. D. 1871, and due ninety days after date, to be secured by mortgage on one hundred and sixty acres of land, being one-half of the same land as hereinbefore described as contained in the trust-deed of that date given by the said John S. Miller to John J. Glenn, as trustee; and that upon the execution of said note and mortgage said bank would cancel and release said four-thousand-dollar note, and said indebtedness of, to wit, twenty-two hundred dollars overdrafts, of the said John S. Miller; and after deducting advance interest thereon for ninety days, would pay over to said John S. Miller the remainder of said sum of sixty-five hundred dollars, to wit, two hundred dollars; and said John S. Miller, there and then well knowing himself to be insolvent, and acting in contemplation of insolvency, and with a view to give a fraudulent preference to said First National Bank, to wit, the sum of sixty-two hundred dollars so owing from him to said bank, agreed to execute the mortgage to said bank as proposed, and as last above stated, and thereupon said bank, for the purpose aforesaid, caused to be prepared a deed of trust in words and figures and legal effect following, to wit:

8 *Trust-deed.*

[Revenue-stamp to the amount of $6.50 on this deed.]

This indenture witnesseth that John S. Miller, of the county of Warren and State of Illinois, grantor herein, in consideration of the indebtedness hereinafter mentioned and one ($1) dollar to him paid by John J. Glenn, of the same place, grantee, the receipt whereof is hereby acknowledged, do hereby grant, bargain, sell, remise, release, and convey unto the said grantee the following-described lots, pieces, and parcels of land, situate in the town of Spring Grove, county of Warren and State of Illinois, to wit, ninety and ninety-two one-hundredths acres, ($90\frac{92}{100}$) lot two (2) in the subdivision of the southeast quarter of section twenty-

four, (24;) also, seventy-nine and forty one-hundredths acres, ($79\frac{40}{100}$,) lot two (2) in the subdivision of the northeast quarter of section twenty-four, (24;) also, eighty (80) acres, west half of the northeast quarter of section twenty-five, (25;) also, seventy-eight (78) acres east side of the northwest quarter of section twenty-five, (25.) All the above-described lands being in township twelve (12) north of the base-line, and in range two (2) west of the fourth principal meridian. To have and to hold the same, with all the privileges thereunto or in anywise appertaining, and all the estate, right, title, interest, claim, or demand in and to the same, either now or which may be hereafter acquired, unto the said
9 grantee, his heirs and assigns; in trust, nevertheless, for the following purposes: Whereas the said John S. Miller, grantor herein, justly indebted upon one promissory note bearing even date herewith, payable to the order of B. T. O. Hubbard, cashier, ninety days after date, for the sum of six thousand five hundred dollars ($6.500,) with ten per cent. interest after maturity: Now, in case of default in the payment of said note, or any part thereof, or the interest accruing thereon, according to the tenor and effect thereof, or in the payment of any taxes or assessments, ordinary or special, which may be levied or assessed against said premises during the continuance hereof, on the application of the legal holders of the said promissory note, the said grantee, John J. Glenn, (full power being hereby given,) or his legal representatives, after having advertised such sale thirty days in a newspaper published in the city of Monmouth, Ill's, or by posting up written or printed notices in four (4) public places in the county where said premises are situate, (personal notice being hereby expressly waived,) shall sell the said premises, or any part thereof, and all the right and equity of redemption of the said grantor, his heirs, executors, administrators, or assigns therein, at public vendue to the highest bidder for cash, at the east door of the court-house in Monmouth, at the time appointed in said advertisement, or may adjourn the sale from time to time, at discretion; and as the attor-
10 ney of the said grantor for such purpose hereby constituted irrevocable, or in the name of the said grantee or his legal representatives, shall execute and deliver to the purchaser or purchasers thereof deeds for the conveyance in fee of the premises sold, and shall apply the proceeds of the sale, (1st,) to the payment of all advances made by the said party of the second part for taxes and assessments, and expenses for advertising, selling, and conveying as aforesaid, including attorneys' fees; and, (2nd,) the amount due on said note; (3d,) rendering the overplus, if any there be, to the said grantor or his legal representatives, at the office of the said grantee, in Monmouth, Ill's, and it shall not be the duty of the purchaser to see to the application of the purchase-money.

And the said John S. Miller, party of the first part, hereby expressly waives, release', and relinquish' unto the said party of the second part, his heirs, executors, administrators, and assigns, all right, title, claim, interest, and benefit whatever in and to the above-described premises, and each and every part thereof, which is given by or results from all laws of this State pertaining to the exemption of homesteads; provided that the said grantor and his heirs and assigns may hold and enjoy said premises, and the rents, issues, and profits thereof, until default shall be made as aforesaid, and that when the said notes, and all expenses accruing hereby, shall be fully paid, the said grantee, John J. Glenn, or his
11 legal representatives, shall reconvey all the estate acquired hereby in the said premises, or any part thereof then remaining unsold, to (and at the cost of) the said grantor or his heirs or assigns. And the said John S. Miller, grantor, covenants with the said grantee and his

legal representatives and assigns, that he is seized in fee of the said premises, and has good right to convey the same in form aforesaid; that they are free from all liens or incumbrances of whatever name or nature, and that he will warrant and defend the same against all claims whatsoever, and will pay all taxes or assessments levied or assessed on the premises, or any part thereof, during the continuance hereof, and pay the same ten days before the day of sale therefor.

Witness the hand and seal of the said grantor this sixteenth day of September, A. D. 1871.

JOHN S. MILLER. [SEAL.]

In presence of—
R. M. STEVENSON.

and presented the same, together with the said note for sixty-five hundred dollars, to the said John S. Miller for his signature; and said John S. Miller, understanding and believing said trust-deed to be an ordinary mortgage, as your petitioners are informed and believe, with the usual redemption given by the statute thereupon, and without any knowledge or impression that the same was a deed of trust providing
for sale of the property therein described by advertisement, &
12 without redemption, as in said trust-deed specified, signed the same on said sixteenth day of September, A. D. 1871, at the office of said bank, in said city of Monmouth, county of Warren, and State of Illinois, without reading the same, or being in any way acquainted with the nature of said deed of trust, save that he understood it to be a mortgage on three hundred & twenty acres of land, instead of one hundred & sixty acres as agreed upon; and said trust-deed, after being signed by said John S. Miller under the full belief and understanding upon his part that the same was an ordinary mortgage which could be only foreclosed in court, and subject to the usual twelve months' redemption after sale thereunder, was by him, on said sixteenth day of November, A. D. 1871, delivered to said bank without any acknowledgment thereof having been taken by any officer authorized by law to take acknowledgments. & upon the secret understanding with the officers of said bank that said supposed mortgage (which was really a trust-deed) should be kept secret and not placed of record, but should remain in the possession of said bank for their security, and unknown to any one save said bank and said John S. Miller and one W'm J. T. Wallace. And your orator would further show, as they are informed and believe,
that after said John S. Miller left said First National Bank with-
13 out acknowledging said supposed mortgage, (really trust-deed,) one W'm B. Young, an employee of said First National Bank, filled out an acknowledgment upon said trust deed, and certified the same at the instance of the officers of said First National Bank, in the absence of the said John S. Miller, and without his knowledge; which said certificate of acknowledgment was in the words and figures following, to wit:

STATE OF ILLINOIS,
Warren County, ss:

On the sixteenth day of September, eighteen hundred and seventy-one, before me, a notary public of the county of Warren, in the State of Illinois, appeared John S. Miller, personally known to me as the same person whose name is subscribed to the foregoing deed of trust, as having

executed the same, & then acknowledged the execution thereof as his free act and deed for the uses and purposes herein mentioned.

Given under my hand and notarial seal this day of , A. D. 186 .

[NOTARIAL SEAL.] (Signed) WILLIAM B. YOUNG, *N. P.*

Your orator further shows, on information and belief, that after said John S. Miller signed said mortgage as he thought, & which was a trust-deed as aforesaid, one R. M. Stephenson, another employee of said First National Bank, without the knowledge of said Miller, signed said trust-deed as a witness; and that afterwards, on, to wit, September
14 26th, A. D. 1871, at ten o'clock a. m., said deed of trust so fraudulently obtained, witnessed, & certified as aforesaid, was by said First National Bank filed for record in the office of the circuit clerk and recorder of deeds in & for the county of Warren & State of Illinois aforesaid. And your orator expressly states, and charges the fact to be, that said First National Bank, at the time of so obtaining the execution and delivery of said sixty-five-hundred-dollar note and trust-deed as aforesaid, had reasonable cause to believe that a fraud on said bankrupt act was intended, and that said debtor, John S. Miller, was insolvent or acting in contemplation of insolvency.

And your orator further expressly charges that at said time when said sixty-five-hundred-dollar note and trust-deed, with interest as aforesaid, was executed and delivered by the said John S. Miller to the said First National Bank of Monmouth as aforesaid, he, the said John S. Miller, was insolvent, or acting in contemplation of insolvency, and with intent to delay, defraud, and hinder his creditors; and being so insolvent and in contemplation of insolvency, did make said trust-deed, as aforesaid, to said John J. Glenn, as trustee for said First National Bank of Monmouth, as aforesaid, with the intent to give a preference to one of his creditors, to wit, the First National Bank of Monmouth, and with the in-
15 tent by such disposition of his property to defeat or to delay the operation of said bankrupt act. And your orator expressly alleges, and charges the fact to be, that the said John S. Miller, being insolvent, or acting in contemplation of insolvency, within four months next before, with a view to give a preference to one of his creditors having a claim against him, to wit, the First National Bank of Monmouth aforesaid, made to John J. Glenn, as trustee, for the use of the said First National Bank of Monmouth as aforesaid, the said trust-deed as above set forth; and that the said First National Bank of Monmouth, Illinois, who was to be benefited thereby, received said trust-deed as aforesaid, the said First National Bank of Monmouth then having reasonable cause to believe the said John S. Miller was then insolvent, or acting in contemplation of insolvency, and that said trust-deed was made in fraud of the provisions of the said bankrupt act.

And your orator further charges that the said John S. Miller, being insolvent, or in contemplation of insolvency, within four months next before the filing of petition in bankruptcy hereinafter stated, did make a conveyance, to wit, the trust-deed aforesaid, to the First National Bank of Monmouth aforesaid, to wit, to John J. Glenn, as trustee, for the use of B. T. O. Hubbard, the cashier of said bank, for the use and benefit of said bank. And your orator here expressly charges that the First National Bank of Monmouth, Illinois, to whom the said trust-deed
16 was made as aforesaid, then had reasonable cause to believe the said John S. Miller to be insolvent, or to be acting in contemplation of insolvency, and that said conveyance, to wit, said trust-deed, was

made with a view to prevent the property of the said John S. Miller from coming to his assignees in bankruptcy and to prevent the same from being distributed under the said bankrupt act, and to defeat the object of the said bankrupt act, and to impair, hinder, defraud, and delay the operation and effect of said bankrupt act, and to evade the provisions of said bankrupt act.

And your orator further charges, on information and belief, that the said John S. Miller did not make said trust-deed, and that the said First National Bank did not receive said trust-deed, in the usual and ordinary course of the business of the said John S. Miller, but took the same in consequence of information theretofore received by the officers of said First National Bank that said John S. Miller was in failing circumstances and insolvent.

Your orator further shows that, on the 18th day of December, A. D. 1871, a petition was filed on the part of certain creditors in the district court of the United States for the northern district of Illinois for an adjudication in bankruptcy against the aforesaid John S. Miller, and that on the 22d day of January, A. D. 1872, the said John S. Miller was, on said petition, in said court, adjudicated and declared
17 a bankrupt.

Your orator charges that the lands above described, conveyed in trust as aforesaid to said John J. Glenn, are worth but little more than the said sum of six thousand five hundred dollars, and that little or nothing can be made out of said lands on a sale of the same by your orator while the said trust-deed is a subsisting lien thereon, and that said deed of trust so made by said John S. Miller, and accepted by said First National Bank of Monmouth, is, and was made by said Miller and accepted by said First National Bank of Monmouth, Illinois, in fraud of the bankrupt act, and with intent to evade the provisions thereof for the purpose and with the intent, on the part of said John S. Miller, to give, and of said First National Bank of Monmouth to secure thereby, a preference to the amount in said deed of trust mentioned, viz, six thousand five hundred dollars; and John S. Miller, at the time of giving said deed of trust, and said First National Bank, at the time of receiving the same, having reasonable cause to believe that said Miller was insolvent, or acting in contemplation of insolvency. And your orator expressly claims that said deed of trust was and is utterly and absolutely void therefor as against the creditors of said bankrupt, John S. Miller, and as against your orator as assignee in bankruptcy of
18 said Miller. Yet it is still spread upon the records of deeds of said Warren County as good and valid, in no wise surrendered, cancelled, or set aside; and said First National Bank of Monmouth, John J. Glenn, its trustee, and B. T. O. Hubbard, its cashier, acting on its behalf and for its benefit, do, and each and every of them does, on behalf of said First National Bank of Monmouth, claim and insist that said deed of trust is and was good and valid as a first lien upon the lands therein mentioned and hereinbefore described to the full amount of sixty-five hundred dollars so by the terms of said deed of trust purporting to be secured thereby, and threaten to advertise and sell the real estate therein mentioned and hereinbefore specifically described, under and by virtue of said deed of trust, for the payment of said sum of sixty-five hundred dollars, and interest thereon, without regard to and in defiance of the provisions of the bankrupt act.

And your orator shows unto your honor that unless said deed of trust be by this honorable court decreed to be set aside and for nought held, great injustice will be done, and loss to the amount of six thousand five

hundred dollars and more be thereby sustained by other the creditors of said John S. Miller, bankrupt, whose assignee your orator is.

19 All of which actings, doings, pretences, and refusals are contrary to equity and good conscience, and tend to the manifest wrong and injury of your orator in the premises.

In consideration whereof, and forasmuch as your orator can only have adequate relief in the premises in a court of equity, where matters of this sort are properly cognizable and relievable; to the end, therefore, that the said First National Bank of Monmouth, John J. Glenn, B. T. O. Hubbard, and John S. Miller, and their confederates, when discovered, may, but not on oath, (their corporal oaths being hereby expressly waived, to the best and utmost of their several and respective knowledge, information, and belief,) full, true, direct, and perfect answer make to all and singular the matters aforesaid, and that as fully and particularly as if the same were here repeated, and they and every of them distinctly interrogated thereto; and that the said deed of trust so held by said First National Bank of Monmouth, and by said John J. Glenn as trustee for said bank, as hereinbefore stated and set forth, may be declared fraudulent and void as against your orator on behalf of the creditors of said John S. Miller, bankrupt, and that the said First National Bank of Monmouth, John J. Glenn, trustee, and B. T. O. Hubbard, cashier as aforesaid, may be ordered and decreed to deliver up the

20 said trust-deed to be cancelled, and that the same may be by order and decree of this hon. court, forever cancelled and set aside; and that your orator may have such other and further relief in the premises as the nature and circumstances of the case may require and to your honor shall seem meet:

May it please your honor to grant unto your orator the most gracious writ of subpœna, to be directed to the said First National Bank of Monmouth, B. T. O. Hubbard, John J. Glenn, and John S. Miller, commanding them, at a certain day and under a certain penalty therein to be limited, personally to be and appear before this honorable court, and then and there full, true, direct, and perfect answer make to all and singular the premises, and to stand to, perform, and abide such further order, direction, and decree therein as to your honors shall seem meet. And your orator will ever pray, &c.

CHARLES E. GRANT,
Assignee in Bankruptcy of John S. Miller.

JAMES H. STEWART and
MCKENZIE and WILLIAMS,
Compl't's Solicitors.

(Endorsed:) Filed July 3d, 1872. W'm H. Bradley, cl'k.

21 And on the same day, to wit, the 3rd day of July, A. D. 1872, a writ of subpœna issued out of said clerk's office against said defendants, which said writ, together with the memorandum and the return of the marshal endorsed thereon, is in the words and figures following, to wit:

Writ of subpœna.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

The United States of America to First National Bank of Monmouth, B. T. O. Hubbard, John J. Glenn, and John S. Miller, greeting:

We command you and every of you that you appear before our judges

of our circuit court of the United States of America for the northern district of Illinois, at Chicago, in said district, on the first Monday in the month of August next, to answer the bill of complaint of Charles E. Grant, assignee of the estate and effects of John S. Miller, a bankrupt, this day filed in the clerk's office of said court, in said city of Chicago, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshal of the northern district of Illinois to execute.

Witness the Hon. Salmon P. Chase, Chief-Justice of the Supreme
22 Court of the United States of America, at Chicago aforesaid, this third day of July, in the year of our Lord one thousand eight hundred and seventy-two, and of our Independence the ninety-sixth.

[SEAL.] W'M H. BRADLEY, *Clerk.*

MEMORANDUM.—The above-named defendants are notified that, unless they shall enter their appearance in the clerk's office of said court, at Chicago aforesaid, on or before the day to which the above writ is returnable, the complainant's bill will be taken against them as confessed, and a decree entered accordingly.

W'M H. BRADLEY, *Clerk.*

I served the within writ upon B. T. O. Hubbard, John J. Glenn, and John S. Miller, therein named, by delivering to each of them personally a true copy thereof, on the 12th day of July, A. D. 1872, and upon the First National Bank of Monmouth, therein named, by delivering to William Laferty, president of said bank, a true copy thereof on the 12th day of July, A. D. 1872.

B. H. CAMPBELL,
U. S. Marshal.
By L. O. GILMAN, *Deputy.*

23 (Endorsed:) Filed July 15th, A. D. 1872. W'm H. Bradley, clerk.

Afterwards, to wit, on the 5th day of August, A. D. 1872, said bank, Hubbard, and Glenn, defendants, by their attorney, filed in said clerk's office their appearance in said entitled cause, which said appearance is in the words and figures following, to wit:

Appearance.

In circuit court U. States, northern district of Illinois.

CHARLES E. GRANT, ASSIGNEE IN BANKRUPTCY of John S. Miller,
vs.
THE FIRST NATIONAL BANK OF MONMOUTH, B. T. O. Hubbard, and John J. Glenn, impleaded with John S. Miller. } Chancery.

I hereby enter the appearance of the defendants, First National Bank of Monmouth, B. T. O. Hubbard, and John J. Glenn, in said cause.

Chicago, August 3d, 1872.

JOHN J. GLENN,
Att'y for said Defendants.

To W'M H. BRADLEY, Esq.,
Clerk of said Court.

(Endorsed:) Filed August 5, '72. W'm H. Bradley, cl'k.

24 Afterwards, to wit, on the 4th day of September, A. D. 1872, said complainant, by his solicitors, filed in said clerk's office his stipulation in said entitled cause, which said stipulation is in the words and figures following, to wit:

Stipulation.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

Circuit court of the United States, September term, A. D. 1872.

CHARLES E. GRANT, ASSIGNEE OF EFFECTS OF John S. Miller, bankrupt,
vs.
FIRST NATIONAL BANK OF MONMOUTH AND others. } In chancery.

We, the undersigned, hereby agree that defendants' answers herein may be considered as filed in time if filed on September 4th, 1872.

STEWART & PHELPS,
For Compl'ts.

(Endorsed:) Filed Sept. 4th, 1872. W'm H. Bradley, cl'k.

25 And on the same day, to wit, the 4th day of September, A. D 1872, came said defendants, said bank, said Hubbard, and said Glenn, and filed in said clerk's office their joint and several answer in said entitled cause, which said answer is in the words and figures following, to wit:

Answer of bank et al.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

United States circuit court, September term, A. D. 1872.

CHARLES E. GRANT, ASSIGNEE OF THE ESTATE and effects of John S. Miller, bankrupt,
vs.
THE FIRST NATIONAL BANK OF MONMOUTH, B. T. O. Hubbard, John J. Glenn, and John S. Miller. } In chancery.

26 The joint and several answers of the First National Bank of Monmouth, B. T. O. Hubbard, and John J. Glenn, three of the defendants to the bill of complaint of Charles E. Grant, assignee of the estate and effects of John S. Miller, bankrupt, plaintiff.

These defendants, respectively, now and at all times hereafter saving to themselves all & all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties, and imperfections in the said bill contained, for answer thereto, or to so much thereof as these defendants are advised it is material or necessary for them to make answer to, answering, say, severally, that it is true that the said John S. Miller did, on the 16th day of September, A. D. 1871, make to said defendant John J. Glenn a certain convey-

ance, commonly called a trust-deed, in trust, however, for the use and benefit of the First National Bank of Monmouth, defendant herein, upon ninety and ninety-two one-hundredths acres, lot two in the subdivision of the southeast quarter of section twenty-four; also, seventy-nine & forty one-hundredths acres, lot two, (2) in the subdivision of the northeast quarter of section twenty-four, (24;) also, eighty (80) acres, west half of the northeast quarter of section twenty-five, (25;) also, seventy-eight (78) acres, east side of the northwest quarter of section twenty-five, (25;) all the above-described lands being in township twelve (12) north of the base-line, and in range two (2) west of the fourth principal meridian, in Warren County, State of Illinois, conveying said premises to said defendant John J. Glenn as trustee, to secure the payment of a certain promissory note made by the said John S. Miller, and payable to the said defendant the said The First National Bank Monmouth, for the payment of sixty-five hundred dollars, ninety days after the date thereof, with ten per cent. interest per annum, after said note became due and payable, copies of which note and trust-deed are herewith filed and made a part of this answer, and respectively marked Exhibits C & D.

And said defendants, severally answering, say that said conveyance was not made by said Miller in contemplation of bankruptcy, and they deny that said Miller was insolvent at the time said conveyance was made; and they deny that said conveyance was made with intent to give said defendant The First National Bank of Monmouth a preference over the other creditors of said Miller, if he had any other creditors at the time the same was made, and they deny that said conveyance was made with intent to defeat and delay the operation of said bankrupt act, as set forth and charged in plaintiff's bill of complaint.

And said defendants, further answering, say that at the time the said Miller executed said note and trust-deed, he, the said Miller, represented to the officers and agents of said defendant The First National Bank of Monmouth that he was worth, over and above all his indebtedness, the sum of twenty thousand dollars, ($20,000;) and said defendants deny that the officers of said bank had reasonable cause to believe at the time of said conveyance and the taking of said security that the said John S. Miller was insolvent, or that he, the said Miller, was acting at that time in contemplation of insolvency. And they deny that the officers and agents of said defendant The First National Bank of Monmouth had or caused said conveyance to be made with a view of preventing the property of the said John S. Miller from coming into the hands of his assignee in bankruptcy, and to prevent the same from being distributed under said bankrupt act, and with a view to injure, hinder, and delay and defraud the operation and effect of and evade the provisions of said bankrupt act.

And said defendants, further answering, say that it is true that the consideration of the promissory note for which said trust was given to secure was for a promissory note before that time given by one William J. T. Wallace and the said John S. Miller, and overdrafts made by the said Miller a few days before the date of said note, (answer here amended so as to read as follows:) "in pursuance of an arrangement by which said overdrafts to the amount of $2,500 were to be secured by a deed of trust unless paid within a few days, which arrangement was made when said Miller was authorized to draw said checks," save as to the sum of about the sum of three hundred dollars; but said defendants deny that William Laferty, the president of said First National Bank of Monmouth, utterly refused, or *or* refused

at all, to give Delos P. Phelps information, or any information he may have desired, about the amount or dates said note or overdrafts of the said John S. Miller in said First National Bank of Monmouth.

Said defendants, further answering, deny that on the 16th day of September, A. D. 1871, and within four calendar months next preceeding the date of the filing of petition in bankruptcy against said Miller in said district, in the county of Warren, State of Illinois, the said defendant The First National Bank of Monmouth, having reasonable cause to believe said John S. Miller to be insolvent, or acting in contemplation of insolvency, did, with a view to prevent the prop-
31 erty of the said John S. Miller from coming into his assignees in bankrupty, and to prevent the same from being disturbed under this act, and with a view to injure, hinder, defraud, and delay the operation and effect of, and evade the provisions of, this act, for the purpose of and with intent to obtain from said John S. Miller a fraudulent preference to the extent of sixty-two hundred dollars, as alleged in the complainant's bill of complaint, or with a view of getting or obtaining any preference whatever, received or accepted said conveyance; and they deny that said note or said trust-deed was made or executed with a view of giving a preference to said defendant The First National Bank of Monmouth, or was the same received and accepted by said First National Bank of Monmouth for the said purpose, but the same was received and accept' by said defendant The First National Bank of Monmouth, believing that the said Miller was solvent, and the same was taken in the regular course of business.

And said defendants deny that said First National Bank of
32 Monmouth agreed with said John S. Miller to take a mortgage on one hundred & sixty acres of land, one-half of the land contained in said trust-deed, to secure said note for sixty-five hundred dollars, payable in ninety days; and they deny that said trust-deed was presented to said Miller by any of the officers of said defendant The First National Bank of Monmouth, or any person for them, representing to him it was an ordinary mortgage, with the redemption allowed under the provisions of the statute of this State; and they say that said trust-deed was read to the said Miller and explained to him fully, and he fully understood the same before he executed the same, and that he executed the same fully understanding the contents of the same; and they deny all fraud or pretences of fraud as set up and charged in said bill by the said defendant The First National Bank of Monmouth, or by any of its officers or agents, as being practiced and resorted to to procure the execution or delivery of said trust-deed by the said Miller; and they deny that said trust-deed was signed by said Miller believing it to be
33 an ordinary mortgage with the twelve months' redemption allowed by law.

And said defendents, further answering, deny that said trust-deed was delivered to said defendent The First National Bank of Monmouth without being acknowledged, or that the same was delivered to said bank with the secret understanding that the same should be held by said bank and not placed of record, but should remain in the possession of said bank, as set up and charged in said bill of complaint; and said defendents say that the acknowledgement was taken at the request of said Miller, and in his presence, and in the presence of said *said* witness, the said R. M. Stevenson. And said defendents deny that there was any fraud or deceit practiced in the acknowledging witnessing of the same, as set forth and charged in said bill of complaint. And said
34 defendents deny that said First National Bank, at the time of the

taking & obtaining the execution and delivery of said note and trust-deed, had reasonable cause to believe that a fraud on said bankrupt act was intended, and that said debtor, John S. Miller, was insolvent or acting in contemplation of insolvency at the time; and that said Miller delivered said note and trust-deed to said defendant The First National Bank of Monmouth, & executed the same, being insolvent or in contemplation of insolvency, with a view to hinder, delay, & defraud his creditors, as set forth and charged in said bill of complaint, and with a view of giving said First National Bank a preference over his other creditors, or to hinder and delay the operation of said bankrupt act.

And said defendants, further answering, deny that the said defendant The First National Bank of Monmouth, at the time of the making, executing, acknowledging, accepting, and receiving of said promissory note and said trust-deed, as charged in said bill of complaint set forth, had any reasonable grounds to believe said Miller was insolvent or contemplated insolvency, or acting in contemplation of insolvency, or acting with a view to avoid or evade the provisions of the bankrupt act, or with a view of preventing his property from coming into the hands of his assignee in bankruptcy, and to prevent the same from being distributed under the provisions of said bankrupt act, or to defeat, impair, delay, or evade the provisions of said act, or the operation or effect of the provisions of the same.

And they, further answering, deny that said note and trust-deed was not taken and made by the said Miller in the usual and ordinary course of business with said Miller, and that the same was taken by the officers of said First National Bank in consequence of information theretofore by them received that the said John S. Miller was in failing circumstances and insolvent.

Said defendents, further answering, say that *that* they are informed, and believe it is true, that on the 22d day of January, A. D. 1872, the said John S. Miller was adjudged and declared a bankrupt by the district court of the United States for the northern district of Illinois.

And said defendents, further answering, denies that the lands described and conveyed in said trust-deed are worth but little more than sixty-five hundred dollars, or that but little can be made out of said lands on a sale while said trust-deed is a subsisting lein on the same, but they say said lands are reasonably worth the sum of twenty thousand dollars, and would sell for the same.

And said defendents, further answering, deny that said trust-deed was made by said Miller and accepted by said bank, the First National Bank of Monmouth, in fraud of the bankrupt act, and with intent to evade the provisions thereof, and with intent on the part of said Miller to give said defendent First National Bank of Monmouth, and for said defendant to secure thereby a preference to the am't of sixty-five hundred dollars, the said Miller, at the time of making the same, and said defendent, said bank, at the time of receiving the same, having reasonable cause to believe said Miller was insolvent, or acting in contemplation of insolvency. And they deny that said trust-deed was or is utterly and absolutely void as against the creditors of said bankrupt, John S. Miller, or as to the complainant, his assignee.

And these defendents severally deny all and all manner of fraud as charged against them, or either of them, as set forth and charged in complainant's bill of complaints, and all and all manner of unlawful combination and confederacy wherewith they or either of them is charged by the said bill. Without this, that there is any other

matter, cause, or thing in the said complainant's bill of complaint contained material or necessary for these defendents to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed and avoided, or denied, is true to the knowledge or belief of these defendents; all which matters and things these defendents are ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

THE FIRST NATIONAL BANK OF MONMOUTH,
B. T. O. HUBBARD,
JOHN J. GLENN,
By JOHN J. GLENN,
Their Solicitor.

39 (Endorsed:) Filed Sep. 4th, 1872. W'm H. Bradley, cl'k.

40 The Exhibits C and D referred to in said answer are in the words and figures following, to wit:

[$6.50 U. S. revenue-stamps affixed.]

This indenture witnesseth that John S. Miller, of the county of Warren and State of Illinois, grantor herein, in consideration of the indebtedness hereinafter mentioned and one ($1) dollar to him paid by John J. Glenn, of the same place, grantee, the receipt whereof is hereby acknowledged, do hereby grant, bargain, sell, remise, release, and convey unto the said grantee the following-described lots, pieces or parcels of land, situate in the town of Spring Grove, county of Warren and State of Illinois, to wit, ninety & ninety-two one-hundredth' acres, ($90\frac{92}{100}$) lot two (2) in the subdivision of the southeast quarter of section twenty-four, (24;) also, seventy-nine & forty-one hundredth' acres, (79.40,) lot two (2) in the subdivision of the northeast quarter of section twenty-four, (24;) also, eighty (80) acres west half of the northeast quarter of section twenty-five, (25;) also, seventy-eight (78) acres east side of the northwest quarter of section twenty-five, (25;) all the above-described lands being in township twelve (12) north of the base-line and in range two (2) west of the fourth principal meridian. To have and to hold the same, with all the privileges thereunto or in any wise appertaining, and all the estate, right, title, interest, claim, or demand in and to
41 the same, either now or which may be hereafter acquired, unto the said grantee, his heirs and assigns, in trust, nevertheless, for the following purposes:

Whereas the said John S. Miller, grantor herein, is justly indebted upon one promissory note, bearing even date herewith, payable to the order of B. T. O. Hubbard, cashier, ninety days after date, for the sum of six thousand five hundred dollars, (6,500.00,) with ten per cent. interest after maturity: Now, in case of default in the payment of said note, or any part thereof, or the interest accruing thereon, according to the tenor and effect thereof, or in the payment of any taxes or assessments, ordinary or special, which may be levied or assessed against said premises during the continuance hereof, on the application of the legal holders of the said promissory note, the said grantee, John J. Glenn, (full power being hereby given,) or his legal representatives, after having advertised such sale thirty days in a newspaper published in the city of Monmouth, Ill's, or by posting up written or printed notices in four (4) public places in the county where said premises are situate, (personal notice being hereby expressly waived,) shall sell the said premises, or any part

thereof, and all the right and equity of redemption of the said grantor, his heirs, executors, administrators, or assigns, therein, at public vendue, to the highest bidder, for cash, at the east door of the court-house,
42 in Monmouth, at the time appointed in the said advertisement, or may adjourn the sale from time to time at discretion and as the attorney of the said grantor, for such purpose hereby constituted irrevocable, or in the name of the said grantee or his legal representatives shall execute and deliver to the purchaser or purchasers thereof deeds for the conveyance in fee of the premises sold, and shall apply the proceeds of sale (1st) to the payment of all advances made by the said party of the first part for taxes and assessments, and expenses for advertising, selling, and conveying as aforesaid, including attorneys' fees, and (2d) the amount due on said note; (3d,) rendering the overplus, if any there be, to the said grantor or his legal representatives, at the office of the said grantee, in Monmouth, Ill's, and it shall not be the duty of the purchaser to see to the application of the purchase-money.

And the said John S. Miller, party of the first part, hereby expressly waives, release', and relinquish' unto the said party of the second part, his heirs, executors, administrators, and assigns, all right, title, claim, interest, and benefit whatever in and to the above-described premises, and each and every part thereof, which is given by or results from all laws of this State pertaining to the exemption of homesteads; provided that the said grantor and his heirs and assigns may hold and
43 enjoy said premises, and the rents, issues, and profits thereof, until default shall be made as aforesaid, and that whenever the said note and all expenses accruing hereby shall be fully paid, the said grantee, John J. Glenn, or his legal representatives, shall reconvey all the estate acquired hereby in the said premises, or any part thereof then remaining unsold, to (and at the cost of) the said grantor or his heirs or assigns.

And the said John S. Miller, grantor, covenants with the said grantee and his legal representatives and assigns that he is seized in fee of the said premises, and has good right to convey the same in form aforesaid; that they are free from all liens or incumbrances of whatever name o nature, and that he will warrant and defend the same against all claims whatsoever, and will pay all taxes or assessments levied or assessed on said premises, or any part thereof, during the continuance hereof, and pay the same ten days before the sale thereof.

Witness the hand and seal of the said grantor this sixteenth day of September, A. D. 1871.

JOHN S. MILLER. [SEAL.]

In presence of—
R. M. STEVENSON.

STATE OF ILLINOIS.
Warren County, ss:

44 On the sixteenth day of September, eighteen hundred and seventy-one, before me, a notary public of the county of Warren, in the State of Illinois, appeared John S. Miller, personally known to me to be the real person whose name is subscribed to the foregoing deed of trust as having executed the same, and then acknowledged the execution thereof as his free act and deed for the uses and purposes therein mentioned.

Given under my hand and notarial seal.

[SEAL.] WILLIAM B. YOUNG, *N. P.*

(Endorsed:)

STATE OF ILLINOIS,
Warren County, ss:

This instrument was filed for record the 26th day of Sept., 10 a. m., 1871, and duly recorded in book 11 of m't'g's, page 400.

J. L. DRYDEN, *Recorder.*

$6,500.00.] MONMOUTH, ILL., *Sept'r* 16, 1871.

Ninety days after date we, or either of us, promise to pay to the order of the cashier of the First National Bank of Monmouth sixty-five hundred dollars, value received, payable at their banking-office, with interest at ten per cent. per annum after maturity.

JOHN S. MILLER.

No. 7577. Due .
Secured by mortgage duly stamped.

45 (Endorsed:) $7577. Jno. S. Miller. Coll's. $6,500.00. Dec. 15, 18 .

46 Afterwards, to wit, on the 19th day of November, A. D. 1872, said complainant, by his solicitors, filed in said clerk's office his replication in said entitled cause; which said replication is in the words and figures following, to wit:

Replication.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

United States circuit court, September term, A. D. 1872.

CHARLES E. GRANT, ASSIGNEE OF THE estate and effects of John S. Miller, bankrupt,
vs.
THE FIRST NATIONAL BANK OF MONmouth, B. T. O. Hubbard, John J. Glenn, and John S. Miller.
} In chancery.

The replication of Charles E. Grant, complainant, to the joint and several answers of the First National Bank of Monmouth, B. T. O. Hubbard, and John J. Glenn, three of the defendants.

The complainant, saving and reserving to himself all and all manner of advantage of exception to the manifold insufficiencies of the said answers, for replication thereunto says that he will aver, maintain, and prove his said bill to be true, certain, and sufficient in the law to be answered unto; and that the answers of the said defendants are uncertain, untrue, and insufficient to be replied unto by this complain-
47 ant; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this complainant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by his said bill he hath already prayed.

CHARLES E. GRANT,
By STEWART & PHELPS, AND
EDWARD P. WILLIAMS,
Sol'rs.

(Endorsed:) Filed Nov. 19, 1872. W'm H. Bradley, cl'k.

Afterwards, to wit, on the 20th day of July, A. D. 1872, in the record of the proceedings of said court in the said entitled cause, before the Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

CHARLES E. GRANT, ASSIGNEE, &C.,
vs.
THE FIRST NATIONAL BANK OF MONMOUTH et al. } In chancery.

Now come the parties, by their solicitors, and this cause is set down for hearing upon the pleadings and proofs herein; and after hearing the same in part, the further hearing of the cause is postponed until to-morrow morning.

48 Afterwards, to wit, on the 21st day of July, A. D. 1875, in the record of the proceedings of said court in said entitled cause, before the Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

CHARLES E. GRANT, ASSIGNEE, &C.,
vs.
THE FIRST NATIONAL BANK OF MONMOUTH et al. } In chancery.

Now come again the parties, by their solicitors, and this cause comes on to be further heard, and after concluding the hearing of the same, the court not being now sufficiently advised in the premises takes time to consider.

Afterwards, to wit, on the 27th day of July, A. D. 1875, in the record of the proceedings of said court in said entitled cause, before the Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

CHARLES E. GRANT, ASSIGNEE OF THE estate and effects of John S. Miller, a bankrupt,
vs.
FIRST NATIONAL BANK OF MONMOUTH, B. T. O. Hubbard, John J. Glenn, and John S. Miller. } In chancery.

Now come the parties, by their solicitors, and the court having considered and being now sufficiently advised upon the matters heretofore submitted herein, finds the equities herein with the de-
49 fendants, and dismisses the bill of complaint herein at the costs of the complainant.

It is thereupon considered, adjudged, and decreed by the court that this cause be dismissed, and that said defendants do have and recover of the complainant their costs and charges by them about their defense in this behalf expended, amounting to the sum of thirty-two dollars and fifty cents; and thereupon said complainant prayed an appeal to the Supreme Court of the United States, which is allowed upon giving bond with security approved by the court.

And on the same day, to wit, the 27th day of July, A. D. 1875, said complainant, by his solicitors, filed in said clerk's office his certificate of evidence; which is in the words and figures following, to wit:

Certificate of evidence.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

Circuit court of the United States, July term, A. D. 1875.

CHARLES E. GRANT, ASSIGNEE IN BANKRUPTCY of John S. Miller, bankrupt,
vs.
THE FIRST NATIONAL BANK OF MONMOUTH, Illinois, John J. Glenn, B. T. O. Hubbard, and John S. Miller.
} In chancery.

Be it remembered that on the trial of the above-entitled cause, on the 20th day of July, A. D. 1875, the following evidence was taken:

It was admitted by the attorneys and counsel for the respective parties that, on December 19th, A. D. 1871, a petition in bank-
50 ruptcy was duly filed in the United States district court for the northern district of Illinois, by John H. Davidson and the Farmers' and Mechanics' Bank of Galesburg, Illinois, praying that John S. Miller, of Warren County, Illinois, be declared a bankrupt; and that afterwards, and on the 22d day of January, A. D. 1872, upon said petition he was duly adjudicated a bankrupt, and Charles E. Grant, the complainant in this case, was duly appointed his assignee by said district court, and the property and assets of said bankrupt were duly assigned to said assignee in pursuance of the provisions of the bankrupt act and as by said act required.

The complainant, to further maintain his bill, read in evidence the deposition of John S. Miller, taken December 12th, A. D. 1872, with the exhibits accompanying the same, and which is set out at page of this record.

And the complainant, to further maintain his bill, read in evidence the deposition of William J. T. Wallace, with the exhibit accompanying the same, and which is set out at page of this record.

And the complainant, to further maintain his bill, read in evidence the deposition of Alexander Gilson, taken December 28th, A. D. 1872, and which is set out at page of this record.

50*a* The complainant, to further maintain his bill, read in evidence the deposition of Frank W. Harding, which is set out at page of this record.

The complainant, to further maintain his bill, read in evidence the deposition of Chauncey Harding, which is set out at page of this record.

The defendants, to maintain their defence, introduced the deposition of William Lafferty, with the accompanying exhibits, which is set out at page of this record.

The defendants, to further maintain their defence, introduced the deposition of B. T. O. Hubbard, and exhibits accompanying the same, which is set out at page of this record.

The defendants, to further maintain their defence, introduced the deposition of W. B. Young, which is set out at page of this record.

The defendants, to further maintain their defence, introduced the deposition of R. M. Stevenson, which is set out at page of this record.

The defendant', to further maintain their defence, introduced the deposition of J. H. Spriggs, which is set out at page of this record.

The defendant', to further maintain their defence, introduced in evidence the deposition of J. G. Moore, which is set out at page of this record.

50*b* The defendants, to further maintain their defence, introduced in evidence the deposition of William Flack, which is set out at page of this record.

The foregoing was all the evidence introduced upon the hearing of this cause or taken therein.

And inasmuch as the matters aforesaid do not appear of record in said cause, the counsel for the complainant present this certificate of evidence, and pray that the same may be signed and sealed by the court and made a part of the record in said cause.

And it is done accordingly.

H. W. BLODGETT, [SEAL.]
Judge.

(Endorsed:) Filed July 27, A. D. 1875. W'm H. Bradley, clerk.

51 *Testimony of John S. Miller.*

In the circuit court of the northern district of Illinois.

CHARLES E. GRANT, ASSIGNEE OF JOHN S. Miller, bankrupt,
vs.
FIRST NATIONAL BANK OF MONMOUTH, ILL'S, et al.

DEC. 12*th*, 1872.

JOHN S. MILLER, being called, examined, and duly sworn, deposes and says in the above-entitled cause as follows, to wit:

Present, J. H. Stewart, for complainant; John J. Glenn, for def't.

State your name, age, & place of residence & occupation.

Name is John S. Miller; age, 43; live in Spring Grove Township, Warren County, Ill's; occupation, farmer.

Are you acquainted with any of the parties to this suit? If yea, with whom, and how long have you known them, respectively?

52 Ans. Have known the assignee, Grant, about one year. Know president and cashier of First National Bank, namely, Mess. Laferty & Hubbard; have known them 15 years. Know John J. Glenn; have known him ten years.

Int. 4. Are you acquainted with W'm J. T. Wallace?

Ans. Have known him twenty years.

Int. 5. State whether or not you have been declared a bankrupt; if so, when, and in what court, and who is the assignee in your case?

(Objected to.)

Ans. I have been declared a bankrupt; I think, in January, 1872, in the United States dis. court for the northern dis. of Ills. Charles E. Grant is the assignee.

Int. 6. State in what business you were engaged previous to being declared a bankrupt, and for what length of time you had followed such business.

Ans. I was farming, & feeding & shipping stock; had been in that business about 20 years.

State whether or not, during the time you were engaged in such
53 business, you were in partnership with or engaged in business with W'm J. T. Wallace; and, if so, state what the connection

between yourself Wallace and was, what length of time it had existed, and state particularly the business carried on by you during that time.

Ans. We were in partnership for a while in feeding and shipping stock. The partnership, as near as I can recollect, was commenced four years ago last November. We did some business together up to the first of January, 1872; latterly but little business. We were in full partnership for two years, and once in a while shipped a load of stock together; the balance of the time we were mostly buying shipping stock; we fed one lot of cattle; we fed a lot of hogs, too, with the cattle.

Int. 8. State what kind of stock you bought and shipped during the continuance of said partnership between yourself and Wallace, & state as near as you can the number & value of said stock you so bought
54 and shipped during each year of your partnership.

Ans. We bought & shipped fat hogs and cattle together. I kept no books. We were counted pretty heavy shippers for the first two years; cannot tell how many we shipped each year.

Int. 9. State whether or not, since you answered the last interrogatory, you have examined any of the books and acc'ts pertaining to the partnership between yourself and Wallace; and, if so, state, if you can, more particularly, the time during which said partnership existed.

Ans. I saw Wallace's book this morning of partnership transactions. We commenced Nov. 19, 1868, and the partnership continued until June the 9th, 1869, and after this we would once in a while buy a load of stock together and ship them and divide proceeds.

Int. 10. State, if you can, the am't paid by yourself and Wal-
55 lace for stock in your partnership business during the continuance of the partnership.

Ans. About 62,000, the book shows, and I don't think it is all down.

Int. 11. State, if you please, what am't per year of business in the stock trade was done by yourself from the 9th day of June, 1869, up to the time of your being adjudged bankrupt.

Ans. I think it will average $120,000 worth per year; at least that, and I think more; but that is as near as I can come at it.

Int. 12. State whether or not at the time you so went into partnership with W. J. T. Wallace, in Nov., 1868, you were owing any debts; if so, to whom were they owing? What was the am't of such indebtedness, and, if secured, how was the same secured?

Ans. I was owing some to different ones; cannot tell whom. I was owing old man Parsons some about $500. I was owing different places, a little money here and there; could not tell how much. I don't
56 think there was much secured; some personal security on some of the notes.

Int. 13. State whether or not, at the time mentioned in the foregoing interrogatory, you were owing any am'ts for land previously purchased by you; if yea, state such am'ts, and to whom they were owing.

Ans. I do not think I was owing anything on land then.

Int. 14. State whether or not, during the continuance of said partnership between yourself and Wallace, you were equally interested with Wallace in the business done by you.

Ans. I was.

Int. 15. State whether or not, during the continuance of said partnership, you furnished half the money necessary to make the purchases you have spoken of; and, if so, how and where did you obtain such money, and from whom, if from other parties than yourself?

Ans. I furnished half the money. We had money from different ones; most of the money was got from the 1st National Bank of Monmouth.

Int. 16. State whether or not, at the time the partnership be-
57 tween yourself and Wallace ceased, you were in debt to the said 1st National Bank of Monmouth; and, if so, in what sum.

Ans. I think I was in debt to said bank; cannot tell how much; cannot give much idea; I don't it was very heavy.

Int. 17. State whether or not, after the discontinuance of the partnership with Wallace, up to the time of your being declared bankrupt, you procured money for your business from any bank or banks; if so, state from what bank or banks you obtained the same, and the time during which you obtained the same from such bank or banks, and the am'ts so obtained by you.

Ans. I got money from 1st National Bank of Monmouth, and the Monmouth National Bank, and from three banks in Galesburg, (cannot recollect the names,) and other places. I was borrowing money all the time when I was shipping stock. I commenced borrowing money from Monmouth National Bank in November, 1870, and continued until
58 Jan. 21st, 1871. I procured from said bank something over $40,000. All the time except about 3 and one-half months I was getting money from the 1st National Bank of Monmouth. As near as I can guess about $200,000.

Int. 18. State why you discontinued procuring money from the Monmouth National Bank in Jan., 1870.

Ans. As near as I can recollect, they wanted three men for security, and I had been giving but two, to renew a note. I forget the am't; they proposed that I should give a mortgage on part of my land. I declined to do that also, and they said they would not do anything more till I would fix it up, and I think they refused to pay some checks.

Int. 19. Please state, as near as you can, the am't of the note you mentioned in the foregoing interrogatory, to whom the same was payable, and who was your security thereon, and the time the same became due.

Ans. I do not believe I can state the am't of said note. It was
59 payable to the Monmouth National Bank.

Int. 20. State, if you know, what was the balance owing by you to the Monmouth National Bank on the 21st of Jan., 1871, and whether or not you paid such balance; and if so, when, and from whom you obtained the money so to do.

Ans. I got the money from the 1st National Bank; do not now recollect the am't. It must have been in January, 1871, and settled up with the Monmouth National Bank at that time.

This examination was here adjourned until Friday, Dec. 13, 1872, at 10 o'c. a. m.

The taking of this dep. was here resumed this 13th day of Dec., 1872. Present, J. H. Stewart, for comp't; J. J. Glenn, for def'ts.

Int. 21. You state in the foregoing int'y that you procured money from the 1st National Bank of Monmouth prior to the time you commenced procuring money from the Monmouth National Bank;
60 state the reason, if any you had, for ceasing to procure money at the 1st National Bank at that time.

Ans. I had been having them to lift some notes, & I gave a check for about $150; they wouldn't pay it. Hubbard, the cashier, and I had a few words about it, and I asked him why he did not talk to me in place of throwing out the check. He said he had been telling me that I had been running over, and it wouldn't do. I asked him how it was some

men could get $20,000, and throwing me out in that style. He wanted to know who got it, and I told him John Wilson. I told him I would go where I could get money, and I wouldn't have anything more to do with him. I went over to the Monmouth National Bank.

Int. 22. If, during the time you were procuring money from the aforesaid banks in Monmouth, or either of them, you in any way se-
61 cured said banks, or either of them, for the monies from time to time procured from them, state how and in what way you so secured them.

Ans. I gave them W. J. T. Wallace for security, and sometimes others as securities on notes. I overdrawed on each bank as high as five or six thousand dollars anyway.

Int. 23. You state in answer to int'y 20 that you procured from the 1st National Bank of Monmouth the am't with which you settled the balance due by you to the Monmouth National Bank. If you secured the First National Bank of Monmouth for the money so procured, state how you so secured them.

Ans. I gave them a note for $4,000, with W. J. T. Wallace for security.

Int. 24. State the length of time given on said note, and whether
62 the same was afterwards secured, and at what time.

Ans. There was ninety days' time given; the note was renewed twice by giving Wallace as security.

Int. 25. State, if you can, the time when the last renewal of said note was made.

Ans. It was last renewed on July 30th, 1871, as near as I can recollect.

Int. 26. Look at the note presented to you, made part of this deposition and marked "Exhibit A," and state whether or not that was the renewal of said note executed July 30th, 1871.

Ans. Yes, sir; I think so.

EXHIBIT A.

$4,000.] MONMOUTH, ILL'S, *July 30th*, 1871.

Ninety days after date we, or either of us, promise to pay to the order of the cashier of the First National Bank of Monmouth four thou-
63 sand dollars, value received, payable at their banking-office, with interest at ten per cent. per annum after maturity.

Ch'g. JOHN S. MILLER.
W'M J. T. WALLACE.

No. 7410. Due .
(J. S. M.)
[U. S. int. rev. st'p, 2 dollars.]

Int. 27. State whether or not, from the said month of January, 1870, up to the 16th of September, 1871, you at any time made overdrafts on said 1st National Bank of Monmouth for more money than you had deposited therein, or secured by notes with security, as heretofore stated. If yea, state the am't of such overdrafts, and particularly the aggregate am't due by you to said First National Bank on acc't of such overdrafts on the 16th day of September, 1871.

Ans. Yes; I made overdrafts a good many times; the am't of said overdraft was about twenty-two hundred dollars.

Int. 28. State whether or not at any time during the time you

64 were procuring money from the First National Bank of Monmouth you borrowed money from any of the officers of said bank; and, if so, state the time you borrowed the same; also the am't and the interest you paid or agreed to pay for the loan of the same; also state who you borrowed the same from, and what office, if any, he held in said bank at the time you borrowed the same.

Ans. I did borrow money from B. T. O. Hubbard, cashier of said bank, on April 11th, 1870; I borrowed $575; I paid fifteen per cent. interest. I also borrowed five hundred and sixty-two from Hubbard April 11th, 1870; I paid fifteen per ct. on this also. Said Hubbard was cashier of said bank.

Int. 29. Examine the notes presented to you and marked Exhibit' B & C and made part of this deposition, and state whether or
65 not the same were executed by yourself and Wallace in consideration of the am'ts borrowed by you from Hubbard, as stated by you in your answer to the preceding int'y.

Ans. They are the notes given by me to Hubbard, cash'r, for money borrowed as stated.

EXHIBIT B.

$562.50.] MONMOUTH, ILL., *April* 11, 1870.

One year after date, for value received, we, or either of us, promise to pay to the order of B. T. O. Hubbard five hundred sixty-two & $\frac{50}{100}$ dollars, with fifteen per cent. interest after maturity, payable at First National Bank of Monmouth, Ill's.

Ch'g. JOHN S. MILLER.
(J. S. M.)
(Ind.:) W'm J. T. Wallace, erased.

[U. S. int. rev. st'p, 25 c'ts.] [U. S. int. rev. st'p, 5 c'ts.]

66 EXHIBIT C.

$575] MONMOUTH, ILL'S, *Apr.* 11*th*, 1870.

One year after date, for value received, we, or either of us, promise to pay to the order of B. T. O. Hubbard five hundred & seventy-five dollars, with fifteen per cent. interest after maturity.

Ch'g. JOHN S. MILLER.
(J. S. M.)
(Ind.:) W'M J. T. WALLACE.

[U. S. int. rev. st'p, 25c.] [U. S. int. rev. st'p, 5 c'ts.]

(Endorsed:) Pay to the order of S. Y. Mason. B. T. O. Hubbard. S. Y. Mason.

Int. 30. State whether or not the notes marked "B" & "C" attached to this deposition have been paid by yourself or any one els' for you; and, if yea, state when and how the same have been so paid.

(Objected to by def'ts' coun.)

Ans. Yes; Hubbard paid them notes. They were paid about the time they were due. He paid them off and charged it to me, and I gave him a check for the money, as near as I can recollect.

67 Int. 31. You state, in answer to a foregoing inter'y, that you had secured the First National Bank of Monmouth, for money procured from it, with notes executed by you, with W. J. T. Wallace and others as security. State whether or not, prior to the execution of said notes marked "B" & "C," you had executed any such notes to secure

money to said bank last mentioned; if *you*, state the am't of said notes, if you remember the same, and what interest was paid by you on the same.

Ans. There was a good many notes given to the bank before these; cannot tell the am't nor time of giving them. I paid ten per cent. interest on all money borrowed from the bank.

Int. 32. State whether or not, about the time you gave to Hubbard the notes marked "B" & "C," or at any time after that time, up to
68 the 16th of Sept., 1871, you borrowed money from any one else; and, if so, in what am't, and what rate of interest did you pay therefor.

Ans. I borrowed from others to a considerable am't, cannot tell how much, and paid ten per cent. interest. I got some from the Galesburg banks, I think, and paid a little more than ten per cent. interest.

Int. 33. If you had a reason for the same, why did you, on the 11th day of April, 1870, pay 15 per cent. for the money borrowed of Hubbard on that day, when you had previously been borrowing money at ten per cent.?

Ans. It was because I could not get as much money as I wanted out of the bank.

Int. 34. State whether or not, at or before the time of executing the notes marked "B" & "C," you had any conversation with B. T. O.
69 Hubbard, cashier of the 1st National Bank, with relation to obtaining the money you then wanted; if yea, state fully such conversation.

Ans. I talked with Hubbard about getting money. He said they hadn't the money to let go themselves, but he said he thought he could find me some, and did so.

Int'y 35. State as near as you can the am't of your indebtedness of every kind & character on the 16th day of Sept., 1871.

Ans. I believe my indebtedness was something over twenty thousand dollars at that time.

Int. 36. State what your property, real & personal, possessed by you on the said 16th day of Sept., 1871, was reasonably worth, after deducting your homestead and personal-property exemptions.
70 (Objected to, because comp't's counsel calls for conclusions of law.)

Ans. I think about seventeen thousand dollars.

Int. 37. You state, in an answer to a former interrogatory, that previous to the said 16th day of Sept., 1871, you had become indebted to the First National Bank of Monmouth for overdraft on said bank amounting in the aggregate to 22 hundred dollars. State whether or not, previous to the said 16th day of Sept., 1871, you were requested by any of the officers of said First National Bank to pay off or secure the said sum of $2,200 so due on acc't of overdraft; if yea, state when the same occurred, and state all that was said, conversation or conversations, and by whom the same was said.

Ans. Hubbard, cashier, wanted to know if I had not better give
71 a mortgage on part of my land. I told him I did not like to do it. About that time I wanted to get some money from Laferty, and he said he guessed I better not do much more until this thing was fixed up. It was about the time that I gave that mortgage. It might have been the day before, perhaps.

Int. 38. State how long the said sum of $2,200, accruing on % of overdraft, or any part thereof, had been due said First National Bank of Monmouth before the said 16th of Sept., 1871.

Ans. I would say something like a month. Some of the time it was not near that amount, not more than $500; not quite all of it had been due a month.

Int. 39. The taking of this deposition was at this point adjourned until Saturday, Dec. 14th, 1872, at 10 o'c. a. m.

72 DEC. 14th, 10 o'c. a. m.—Resumed the taking of this deposition.

Present, John J. Glenn, for def'ts; J. H. Stewart, for comp'ts.

Int 39. Please to look at the papers now handed to you and marked Exhibits D & E of this deposition, and state whether you signed the same at the time the same purport to have been signed, respectively.

Ans. I signed these papers referred to on their dates respectively.

Int. 40. State whether or not you rec'v'd any consideration for the execution of the note marked "Exhibit E;" if so, state what that consideration was, and whether any part of the same was for a pre-existing debt owing by you to the said 1st National Bank of Monmouth, and state fully the am't and character of such considerations.

73 Ans. I was owing them $4,000 by a note, and Wallace was security. I was owing the bank $2,200 besides the note, and the said bank let me have $300 in money if I would secure the whole by a mortgage. The note was for money that I had got of them before that time, and the $2,200 was overdrafts made at various times.

Int'y 41. Look at note marked "Exhibit A" of this deposition, and state whether or not that is the note you speak of in your foregoing answer as forming part of the consideration of said instrument marked "Exhibit E."

Ans. Yes; that note is a part of the consideration as spoken of above.

Int. 42. State whether or not, before and at the time you signed the instruments marked D & E as exhibits, you had any conversation with relation to the execution & recording of the same with any of the officers of the 1st National Bank of Monmouth; if so, state with whom and what officer you had such conversation, and state fully the conversation between you relating to said subjects.

74 Ans. Yes; I talked with B. T. O. Hubbard, the cashier; I think it was the day before I signed the note and mortgage. He was at me to give a mortgage, and I said I did not like to do it. He said it was the best way, and then I could go right along on my own footing. I said if I had started in that way it might have done, but now I don't think it would look very well; I said it would make people kind of 'fraid of me. He said no one need know anything about it. I said it couldn't be got up without their knowing it. It would have to be on record, and they would see it. He said they could get it up right there, and leave it right there, and wouldn't put it on record, and no one need know anything about it. That is all I know about that talk.

Int. 43. State whether or not, on the same day or before that time you signed said instruments marked D & E, there was any con-
75 versation between you and any of the officers of said 1st National Bank as to what the instrument securing your indebtedness to said bank should be; and, if yea, with what officer you held such conversation, and state fully what was said in such conversation.

Ans. I talked with Tread Hubbard, the cashier, I think the day before I signed it. He said I could give a mortgage on the two south 80s of my land. He wanted to know the numbers of the land. I told him I couldn't tell them. He said they could find out themselves. I came in

the next day and signed the mortgage, as I had an idea it was on the two 80s. After I signed it Hubbard handed me this paper. (The paper marked "Exhibit F" was here handed in and attached to this deposition and made a part *of* thereof.)

EXHIBIT F.

90.92 a., lot 2, S. E. 24, 12 N., 2 W.
79.40 a., " 2, N. E. " " " "
80 W. ½ N. E. 25, " "
78 E. ½ N. W. 25, " "

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76 and asked me if it was all right. I said if it was not I could find out and let him know. I said, I thought you was only going to take it on part of my land in place of on all of it, because I would like to have got as much as 10,000. He says, we ain't buying your land; this is only got up temporarily, until you can do better. I told him I was going to Chicago to see if I couldn't get money for less interest. That is all I know about it.

Int. 44. State whether or not before you signed the instruments marked D & E, you read the same over; and, if not, state why you did not; and also state whether the same were read over to you by any one previous to your signing the same.

Ans. I did not read them over before *you* signed them, because I am a very poor hand to read writing for one reason, and I thought that Hubbard would have it all straight. They were not read over to me by any one.

77 Int. 45. State whether or not, before the execution of said instruments marked D & E, any inducements were held out to you to induce you to execute the same by the officers of said bank, such as the payment of money or other advantage to you; and, if yea, state fully what such inducements were, by whom they were offered, and how long before the execution of said instruments.

Ans. The day before I signed that mortgage, as nigh as I can recollect, Hubbard said he would let me have about $300 more money. That would make $6,500 in all.

Int. 46. State whether or not the said sum of $300 was paid to you; and, if so, when and by whom, and is it the same sum of $300 mentioned by you in your answer to int'y No. 40?

Ans. It was paid to me by Hubbard, cash, I think, the same day I signed this mortgage or trust-deed. It is the same sum mentioned by me as above stated.

Int. 47. State whether or not, previous to the execution of the
78 instrument marked "Exhibit D," you ever executed in favor of any one a mortgage or trust-deed upon lands owned by you.

Ans. I never made a mortgage to any one before this, unless I did to Erskine in buying some land from him; and I am satisfied that I never gave any mortgage to any one except this. I have ascertained this since I gave the first part of my answer.

Cross-examination by J. J. Glenn, def'ts' att'y:

Int. 1st. What number of acres of land did you own on the 16th day of Sept., 1871?

Ans. I owned on that date three hundred and thirty-eight & $\frac{32}{100}$ acres of land.

Int. 2. In what town, county, & State was such land situated?

Ans. All in Spring Grove Town, Warren Co., Ill's, except 10 acres of timber which was in Kelly Town, Warren Co., aforesaid.

Int. 3. What at that time was the 10 acres of timber worth in Kelly Township?

79 Ans. Not far from $200.

Int. 4. What kind of timber was on it?

Ans. Some white oak and some red oak, some white hickory, some elm, and lime and walnut.

Int. 5. How many cords of wood per acre was on it?

Ans. There was two-thirds of it taken off; could not say how many cords could be taken off.

Int. 6. Would not the land be worth $20 an acre if all the wood was off of it?

Ans. No; it would not be worth near that.

Int. 7. What would it be worth;

Ans. I am satisfied it wouldn't be worth ten dollars per acre.

Int. 8. Was the land you owned at that time in Spring Grove improved or not?

Ans. All improved, except about 8 acres.

Int. 9. What was it worth per acre on the 16th of Sept., 1871?

Ans. Close to $40 per acre.

Int. 10. Was it not good prairie-land?

Ans. The most of it was.

Int. 11. What did you get for the 80 acres you sold?

(Objected to.)

80 Ans. I got $60 per acre.

Int. 12. When did you sell it?

Ans. About a year ago last spring; that is, in the spring of 1871.

Int'y 13. Was the 60 acres a part of your farm?

Ans. Yes; it was a part of my farm.

Int. 14. Were there any buildings on it?

Ans. There was a school-house on one corner of it.

Int. 15. Did the school-house belong to you?

Ans. No, sir. I had some interest in it, though.

Int. 16. Did you sell the school-house with the land?

Ans. No, I did not.

Int. 17. What buildings were on your land on the 16th of Sept., 1871, in Spring Grove Township?

Ans. There was a right good barn, a couple of houses, tolerably fair, and a small wash-house.

Int. 18. What was the barn worth?

Ans. About $2,000.

Int. 19. What were each of the dwelling-houses worth?

Ans. One about $300 and one about $600.

Int. 20. Was your land in Spring Grove Township fenced at that time; and, if so, how?

81 Ans. It was fenced mostly by plank fence, and a hedge by the side of this fence about three hundred and fifty rods.

Int. 21. Was there a bearing orchard on your land in Spring Grove Township at that time?

Ans. None to amount to very much.

Int. 22. State what number of fruit-trees was there on it, and their age.

Ans. About twenty trees—some of them 7 or 8 years old, and some of them 15 years old.

Int. 23. What number of horses did you own on the 16th day of Sept., 1871?

Ans. About 7 head.

Int. 24. Were they all work-horses?

Ans. Not all of them.

Int. 25. What were they worth per head?

About one hundred dollars.

Int. 26. Did your land in Spring Grove T'p lay in a body, and constitute your farm at that time?

Ans. Yes, except there was a road cut off about 78 acres.

Int. 27. Did you farm it yourself?

Ans. I did, all except about 50 acres; that I rented.

Int. 28. How many head of cattle did you have on said day last mentioned?

Ans. About ten head.

82 Int. 29. What were they worth per head?

Ans. Twenty-five dollars.

Int. 30. How many head of hogs did you have at that time?

Ans. About 120, big & little.

Int. 31. What were they worth per head?

Ans. About six dollars.

Int. 32. Were you at that time engaged in the stock business?

Ans. I was buying & selling stock & shipping.

Int. 33. Had you no stock bought at that time for the market?

Ans. No; I had none that I recol'ted of.

Int. 34. How many mules did you have at that time?

Ans. Not any.

Int. 35. How many plows?

Ans. I had three corn-plows, and about 21 breaking-up plows.

Int. 36. How many corn-planters, and whose make?

I had one; Brown's corn-planter.

Int. 37. How many reapers and mowers, and whose make?

Ans. I had one mower, called the Champion.

83 Int. 38. What was it worth?

Ans. It was worth sixty dollars; I had had it about two years.

Int. 39. How many wagons did you have at that time?

Ans. I had two, and one old one not worth much.

40. How many buggies?

Ans. I had two.

Int. 41. How many acres of corn did you have at that time?

Ans. About 90 acres.

Int. 42. How many oats?

Ans. About five acres.

Int. 43. How much barley, rye, and wheat?

Ans. None.

Int. 44. How much corn did you have at that time in your cribs or barn?

Ans. About 200 bushels.

Int. 45. What am't of money was due from parties owing you at that time?

Ans. About 100 dollars.

84 Int. 46. Had you rec'd pay for the 80 acres you sold the spring before at that time?

Ans. I had.

Int. 47. Did you not have a claim against Notley, Scott & Son on the 16th of Sept., 1871, for about a thousand dollars?

Ans. I had, in the way of a judg't, or I had commenced suit against him, at least.

Int. 48. Did you not tell B. T. O. Hubbard, cash'r of the First National Bank, the day you executed *the* and acknowledged the trust-deed testified about in your examination-in-chief, or the day before, that you were worth 30 thousand dollars, and did not owe over ten thousand dollars, or words to that effect?

Ans. I never told Hubbard so, nor no other man.

Int. 49. What am't did you tell Hubbard that you owed at that time; that is, the 16th day of Sept., 1871?

85 Ans. I did not tell him anything about what I was owing.

Int. 50. You were engaged largely at the time in the stock business, were you not?

Ans. I was shipping stock pretty heavy about that time.

Int. 50. Your credit was good, was it not?

Ans. It was good as far as I know.

Int. 52. Did you not tell B. T. O. Hubbard, the day you executed the trust-deed, or the day before, in the office of the 1st National Bank of Monmouth, in the city of Monmouth, that you were worth $30,000, and that ten thousand dollars would clear up everything that you owned, or words to that effect?

Ans. I did not.

53. Why did you tell him that you were going to Chicago in a few
86 days to get ten thousand dollars because you could get it at a lower rate of interest, if at that time you owed more than you were worth?

Ans. I thought that they would not be willing to let me have that much money, and Wallace had said he thought I could get it in Chicago for less interest.

Int'y 54. Why did you tell Hubbard you wanted to get $10,000 at the time the trust-deed and note for $6,500 was given?

Ans. Because I saw that he had this trust-deed on all my land in place of the two south 80s, and when I mortgaged all my land, I wanted to get more money and get out of debt, and get it on long time.

Int'y 55. Did you not furnish Laferty, the president of the bank, with a plat of your lands to be included in the trust-deed?

Ans. I did not.

Int. 56. Was there not a plat prepared by Laferty of your
87 lands included in the trust-deed presented to you and examined by you before you signed the trust-deed?

Ans. There was none shown to me before I signed the trust-deed.

Int'y 57. Are you as certain of that as you are of anything else that transpired about that time that you have testified about?

Ans. Yes, I am.

Int. 58. Who was present when you signed the trust-deed and note?

Ans. Hubbard, W. B. Young; I think no one else.

Int. 59. Was it during banking-hours that the note and trust-deed was signed by you?

Ans. Yes.

Int. 60. What time in the day did you sign them?

88 Ans. I do not reccollect. I think it was some time in the afternoon.

Int. 61. At the time you signed the trust-deed and note, how soon after that did you expect to take them up or pay them off?

Ans. Inside of 90 days.

Int. 62. Did you not tell Hubbard at *at* the time, or about the time

you executed the note and trust-deed, that you wanted to get ten thousand dollars on long time at ten per cent. interest, as that would fix you all up or pay off your debts, or words to that effect?

Ans. I said I would liked to have got as much as ten thousand dollars. I think that is all I said at that time.

Int. 63. Why did you want ten thousand dollars?

89 Ans. Before that time I found I was in debt about $17,000, as nigh as I can reccollect. I thought if I could get ten thousand dollars I would try and work along.

Int. 64. Did you tell Hubbard, or any officer of the bank at that time, i. e., at that time of the execution of the trust-deed & note, that you were in debt about seventeen thousand dollars?

Ans. I did not.

Int. 65. Do you swear that you gave the trust-deed & note unwillingly?

Ans. When I signed it I thought it was a mortgage on the two south 80-acre tracts of my land. After I signed it, Hubbard showed me the numbers of the land, and wanted to know if it was all right. I told him if it was not I would find out and let him know; but I thought he was only going to take on part of the land in place of on all of it. He

90 said, "We ain't buying your land; this is only temporary till you can do better." I thought it was a mortgage until some time afterwards Wallace told me it was one of those shut-down deeds.

Int. 66. How long after you executed the trust-deed & note was it that Wallace told you it was one of those shut down deeds?

Ans. As nigh as I can reccollect, about ten or twelve days. (Wallace says to me, that is one of these yer shut-down deeds; that Lawrence Gilmore had been and examined the records; that it was on record, and that he, Lawrence, had blowed it all to the devil.)

(All in parenthesis is objected to as not being responsive to the question.)

Int. 67. How soon after you found that it was a shut-down deed, as you call it, did you notify any of the officers of the bank of that fact?

(Objected to because counsel assumes that he notified the officers of the bank at all)

91 Ans. I did not notify them at all.

Int. 68. What is *a* difference between a trust-deed and mortgage?

(Objected to by comp't's counsel as asking for an opinion on a question of law.)

Ans. As near as I know about it, a mortgage can run on longer than a trust-deed.

Int. 69. Would you have known the difference if the trust-deed had been read to you before you signed it?

Ans. I would known the difference, and also I would have known it was on all my land in place of it being on two 80s.

Int. 70. Then, if the trust-deed was read to you, you know it was a trust-deed and not a mortgage, and that it contained the land mentioned therein and not your two south 80s only?

92 Ans. I would have known it was not a mortgage; and if they had the numbers all right it would have been all right, and I am satisfied now that they had them all right.

Int. 71. Was the ten acres of timber included in the mortgage?

Ans. It was not.

Int. 72. Who furnished the numbers of your land to the officers of the bank included in the trust-deed?

Ans. I do not know.

Int. 73. Did you not tell them what land to put in the trust-deed?

Ans. They wanted me to describe the land to them, and I told them I could not do it very well, and they said they could find that out themselves. I told them it was land I bought of Erskine.

93 Int. 74. Was there a plat of the land included in the trust-deed at the bank at the time it was drawn?

Ans. No plat except those numbers which they gave me after I signed it.

Int. 75. Do you mean by "those numbers they gave me after I signed it" Exhibit F, attached to your examination-in-chief?

Ans. Yes; these are the numbers.

Int. 76. Prior to the execution of the trust-deed, did you inform any of the officers of the 1st National Bank of Monmouth that you were indebted to any person or banking corporation in Galesburg, Ill's?

Ans. No; I did not.

Int. 77. Where did you ship your stock from before the execution of the trust-deed to the first of Jan., 1871?

94 Ans. I shipped from Alexander & Spring Grove, and I shipped some from Viola & Roseville & Cameron, Galesburg, as near as I can reccollect; also North Henderson & Rio.

Int. 78. What other debts did you owe in the city of Monmouth except to the 1st National Bank at the time you executed the trust-deed?

Ans. I was owing this other bank, I forget how much—this Monmouth National Bank—I think about $4,000. I may be mistaken in the am't, and different other places; I cannot reccollect who all.

Int. 79. Did you not swear in your examination-in-chief that on the 21st of Jan., 1871, you got the money of the 1st National Bank to pay off what you owed to the Monmouth National Bank, and then quit doing business with the Monmouth National Bank?

95 Ans. Yes. I don't know exactly what day it was paid, but then it was paid with that money.

Int. 80. Then you are mistaken, are you not, about owing the Monmouth National Bank $4,000 at the time you executed the trust-deed, (Sept. 16th, 1871?)

Ans. Yes; I am mistaken about that. I did not owe them anything. I was owing other places in Monmouth at that time.

Int. 81. Who did you owe in Monmouth at that time?

Ans. I could not tell who all—different ones.

Int. 82. Name one of them.

Ans. I was owing Brewer for one, or Brewer & Schultz.

Int. 83. How much were you owing Brewer & Schultz, and what for?

96 Ans. As much as $25 for different things.

Int. 83. Name another &——

Ans. Moses & Nusbaum.

Int. 84. How much did you owe him?

Ans. I don't know how much; something under forty dollars.

Int. 85. Name another party that you owed at that time.

Ans. John Babcock; about 70 dollars.

Int. 86. Who else did you owe in Monmouth?

Ans. I can find out pretty nigh the whole of them if you will give me a little time.

Int. 87. How much time do you want?

Ans. I think I could do it in an hour's time.

97 Int. 88. Then you can't think of anybody else that you owed in the city of Monmouth at that time?

Ans. I can, but cannot tell exactly how much I was owing them.

Int. 89. Give their names.

Ans. Stephen, Gamble & Bake.

Int. 90. Are they all?

Ans. No; they are not all.

Int. 91. Who else?

Ans. Warren Wright, (taylor.)

Int. 92. Who else besides Wright, the taylor?

Ans. I was owing Scott some.

Int. 93. Was not what you owe' to each one of these parties considerably less than $100?

98 Ans. Yes; it was under one hundred. I have not answered all that I was owing yet. There was more that I was owing over 100 dollars.

Int. 94. Who was it that you were owing over $100 *dollars* in Monmouth at that time?

Ans. Can I have the books that contain the acc'ts against me? I cannot recollect who all now. I could find out if you would give me an hour's time.

Int. 95. You cannot recollect any of them now, can you?

Ans. There was a man that was keeping a grocery store, I cannot reccollect his name, that I was owing about $500.

DEC. 19TH, 1872.

The taking of this deposition was here resumed.

Present: J. T. Morgan, register; J. H. Stewart, for comp'ts: J. J. Glenn, for respondents.

Re-examination-in-chief:

99 Int. 1. You say, in answer to 11th cross-interrogatory, that you got $60 per acre for an 80-acre piece you sold in the spring of 1871. State to whom you sold the same, and whether there were any circumstances making said land more valuable to him than others; if yea, state fully those circumstances, and state further what you would consider the market price of said land at the time you sold the same.

Ans. I sold it to Thack Porter. He had a piece of land that he lived on that was not well fitted for farm without more land to it, on account of its being brushy & hilly. At the time I sold it I considered it worth $50 per acre. I got more than I thought it was worth to me.

100 Int'y 2. In answer to int'y 30 you say that you had, about the time of the execution of said trust-deed, about 120 hogs, big & little, and that they were worth about $6 per head. State whether, after thinking over this matter, you desire to make any change in your answer either as to the number or value.

Ans. There might have been a few more hogs, but the value was about the same; that is, I mean the am't of money.

Int. 3. You state, in your answer to int. 47, that you had a claim vs. Notley, Scott & Son for about $1,000; state the nature of said claim and its situation at the present time.

Ans. I contracted to him 200 hogs and he wouldn't take them. I sued him for the damage. I got a judg't in cir. court of $990. He carried it up to the supreme court, and the case is not yet decided.

101 Int. 4. In your answer to int'y 50 you state that about the time of making said trust-deed you were shipping stock pretty heavy;

state the time you last shipped stock previous to the making such deed, as near as you can reccollect.

Ans. Between 21st & 25th of August I shipped about $2,500 worth of hogs that I was feeding; whether I shipped any more or not I don't recollect; but I think I did.

Int. 5. Please state if you shipped any stock after the time above stated and before the execution of the trust deed, when it was, and the am't and value thereof.

Ans. I think about one car-load, as near as I can reccollect; I think between the 25th and the 30 of August; worth about $600.

Int. 6. State how you were paid for the hogs shipped at the times last above mentioned.

102 Ans. I was paid by Hubbard, cashier 1st National.

Int. 7. State whether or not you were paid by Hubbard in money or in credit upon your acc't.

Ans. By his giving me credit on my acc't. I think that's the way.

Int. 8. State why, if there was a reason for the same, you shipped no more stock than the above two lots between the 21st of August and the 16th of September.

Ans. I went to Laferty to get some money. He said he guessed I had better fix this matter up before I did much more. I did not ship more because they would not let me have the money to buy with.

Int. 9. State whether or not at or about the time of the execution of the trust-deed, there was a promise by any of the officers of said

103 bank to furnish you money if you would secure what you owed them by mortgage on your land.

Ans. Hubbard said if I would give him a mortgage on the two south 80s, that he would let me have about $300 more money. That would make, in all, about $6,500.

Int. 10. State whether or not there was any promise from said Hubbard, or Laferty, the president of the bank, that they would furnish you money to continue stock operations after the execution of said trust-deed.

Ans. Hubbard said I would be all right then; that I could go right along just the same as ever, and be nothing in the way.

Int. 11. State whether or not said bank did furnish you money after the execution of said trust-deed. If so, how long and in what am't?

104 Ans. About two weeks. I can't tell exactly the am't. About the time that I sh'p'ed a big lot of hogs from Alexandria they refused to pay a lot of my checks. Then I quit shipping.

Int. 12. State whether or not during the year, previous to the execution of said trust-deed, your shipping business was profitable or not, and whether during that year you made or lost money on your purchase and shipment of stock.

Ans. In the way the money was handled, I lost a good deal of money.

Int. 13. You say, in answer to an interrogatory-in-chief, that at the time you signed said trust-deed you thought it was a mortgage. State whether or not, if you had known the same to be a trust deed, would you have signed the same?

Ans. I would not.

105 Int. 14. In answer to cross-interrogatory 87, you say you could ascertain your indebtedness in Monmouth in an hour's time; since that answer, have you ascertained what that indebtedness was?

Ans. Somewheres near the am't.

Int. Can you write; and, if so, to what extent?

Ans. I can write my name only.

Int. 16. State whether or not you have ascertained the am't of your indebtedness in Monmouth, and procured the same to be written down in your presence, and for you.

Ans. Yes; I have.

Int. 17. Have you that memorandum with you? If so, produce it.

Ans. I have.

(The last two interrogatories and the answers thereto are ob-
106 jected to by counsel for respondents, because not legitimate re-examination.)

Int. 18. State whether you have examined the papers produced by you and marked "Exhibit G" of this deposition, and state whether the same is a correct acc't of the indebtedness due by you to persons in Monmouth at the time of the execution of the trust-deed, except the $6,500 secured by said trust-deed.

Ans. I have examined the paper, and it is as near as I can come at it. Some of these in said memorandum might not have been due at the time.

(Question and answer objected to by respondent's counsel.)

107 EXHIBIT G.

SEPT. 16. 1871, *in Monmouth:*

Mason,	about	$540 00
John Brown,	"	575 00
Bane,	"	1,300 00
Martin,	"	770 00
Difenbaugh,	"	700 00
Security for Sheldon		800 00
Jenks,	"	1,050 00
Gregg,	"	350 00
Sturt. & Phelps		200 00
James Davidson		35 00
Dif'erent places	"	400 00
Livery-stable		70 00
		6,830 00
		40 00
		$6,790 00

Int. 19. State whether or not you have also had a list made for you, and in your presence, of debts owing to persons outside of the city of Monmouth on the said 16th of Sept., 1876; and, if so, produce the same.

108 Ans. Yes; I have. (Paper produced.) This is correct as far as I can recollect; there may be some more.

Int. 20. Look at the paper produced by you, and marked "Exhibit H," and state whether it is a correct acc't of the indebtedness mentioned by you in your answer to the last interrogatory.

Ans. Yes, as near as I couly give it.

(Intr. & answer objected to.)

EXHIBIT H.

GALESBURG, *Sept.* 16, 1871.

Mosher, about		550 00
Second National Bank		1,000 00
Farmers' & *Mecanes'* Bank		2,600 00
Ryner,	about	1,100 00
Jacob Wright,	"	550 00
Dennison,	"	800 00
J. Smith,	"	350 00
W'm Carson,	"	900 00
Silvas,	"	550 00
Vantarrel,	"	950 00

Int. 21. You state, in answer to a former interrogatory-in-chief,
109 that at the time of the execution of said trust-deed, your indebtedness am't'd to over $20,000; state, if you can, how much over $20,000 that indebtedness was.

Ans. From what I have found out since, it was over $24,000 in all.

Cross-ex. resumed:

Int. 1. Did you know how much it was at the time you executed the trust-deed?

Ans. I did not know at that time.

Int. 2. You are anxious to defeat this trust-deed, are you not?

Ans. On some acc't I would rather they would get beat.

Int. 3. You did not think you were insolvent at the time you executed the trust-deed, did you?

I thought I was in debt fully as much as I was worth.

110 Int. 4. Why did you not make an assignment, then, for the benefit of your creditors, instead of borrowing money and giving a trust-deed?

Ans. I thought if I could give a mortgage on the two south 80s to the First National Bank of Monmouth for $6,500, then I would look around and see if I couldn't mortgage the whole of my place for about $10,000, and then I thought I could get along.

Int. 5. When you executed the trust-deed, you did not think of quitting business, did you?

Ans. No; I did not.

Int. 6. You thought you could pay all your debts, did you not?

Ans. By getting ten thousand doll's on long time, I thought I could pay them.

111 Int. 7. Did you not tell the officers of the bank at the time you gave the trust-deed that in a short time you expected to get $10,000 and lift it?

Ans. No.

Int. 8. Did you tell them anything of that kind about that time?

Ans. (After I signed this trust-deed, Hubbard handed me the numbers of the land.) I said nothing about lifting it, that I reccollect of.

Int. 9. Did you pay for any hogs you bought with checks drawn on the First National Bank while you were in business?

Ans. I did.

Int. 10. Who wrote the checks?

Ans. Wallace, Aust. Snyder, &c.

Int. 11. Do you swear you never wrote a check yourself?

112 Ans. I never wrote one; I have signed a good many.

Int. 12. Do you swear you cannot write anything but your name?

Ans. I don't write anything but my name.

Int. 13. Can you read writing?

Ans. Most of writing that is very plain, by taking a long time I can read it.

Int. 14. Who made out for you Exhibits G & H attached to your deposition?

Ans. Mc. & Wallace counted it up, and he wrote it down.

Int. 15. How do you know said exhibits are correct?

Ans. We made them out the best we knowed how.

Int. 16. Is not Wallace on all notes with you for more than has been borrowed by you?

113 Ans. Most of them, but not all.

Int. 17. What ones is he not on?

Ans. Van Tassel's note, and I think Bill Carson's.

Int. 18. Is that all?

Ans. There may be some more.

Int. 19. Name who else.

Ans. I do not reccollect now.

Int. 20. When did you get the money from Martin, Brown, Mason, Diffenbaugh, and Jenks, if it is for borrowed money?

Ans. I got it of Jenks nearly a year before the mortgage was given. I do not reccollect when I got money of Martin; it might have been six months before. It might have been six months before that also that I got of Brown. I do not reccollect when I got of Mason & Diffenbaugh.

114 Int. 21. Did not Wallace and you use the money that you got of Brown, Martin, Mason, Diffenbaugh, & Jenks, in buying stock together?

Ans. I think I used all this money myself. It was got on purpose for me.

Int. 22. Did you make any deposits in the First National Bank after the first of Sept. and before the 16th of Sept., 1871?

Ans. I did.

Int. 23. Were these deposits pay for stock that you had shipped?

Ans. Yes.

Int. 24. Did you deposit the money you rec'v'd for stock that you had shipped and sold from the 21st Jan., 1871, until the 16th of Sept. the same year, with the First National Bank of Monmouth?

115 Ans. The most of it come back to the bank, and they said they give you credit for it.

Int. 25. When did you have the balance deposited?

Ans. I do not reccollect whether I had any come back to any other banks or not; sometimes I put some of it in my pocket when I was up there with stock.

Int. 26. You say you lost money the last year you were in the stock business: Did you tell any of the officers of the 1st National Bank that you were losing money?

Ans. Two or three months before I quit getting money at that bank I told Hubbard that there must something wrong. I was a good deal more behind than I expected by the way he said that I stood.

Int. 27. Was that the only way that you knew *that you knew* you were losing money?

116 Ans. Not the only way.

Int. 28. How else did you tell that you were losing money?

Ans. Me and Wallace tried to reccollect the most of the places that I was owing a short time before that, and I found it was a good deal more than I had any idea it was.

Int. 29. How long before you had this talk with Hubbard was it that you tried to reccollect how much you owed?

Ans. About three or four months.

Int. 30. What month was it in?

Ans. It seems to me it was the last of April, 1871.

Int. 31. When was it you told Hubbard that there must be something wrong; that you were a good deal more behing than you thought
117 you was from what he said about the way you stood? Give the month & year.

Ans. Not far from the middle of August, 1871; that's as near as I can reccollect.

Int. 32. Where was it you told Hubbard?

Ans. At the First National Bank of Monmouth.

Int. 33. Who was present?

Ans. Not any one that heard our conversation, I think.

Int. 34. Did not W. J. T. Wallace go in the bank with you?

Ans. Not as I reccollect, at that time.

Int. 35. Was not he with you at that time, and did not he talk to Laferty at the same time?

Ans. I don't know whether Wallace was in town or not.

118 Int. 36. Then Wallace knew how you stood in April, 1871?

Ans. I think he knew pretty nigh as well as I did.

Int. 37. How much did you owe then?

Ans. As nigh as we could make out, I owed $17,000.

Int. 38. Wallace knew about as much about your business as you did yourself for several years prior to the time of your executing the trust-deed, did he not?

Ans. No; he did not. He knowed a good deal more about it from April, 1871, up to the time I gave the trust-deed than he did before that time, especially five or six years back of it.

Int. 38. Don't Jack Miller own the 80 acres you sold in the spring of 1871 now?

Ans. I am pretty certain that he does not.

119 Int. 40. Did Thack Porter pay you for it?

Ans. Yes.

Int. 41. Did Thack Porter buy it himself?

Ans. Yes.

Int. 42. Does not Jack Miller farm that 80?

Ans. No; he does not.

Int. 43. Who does?

Ans. Thack Porter.

Int. 44. Does he not rent it of Jack Miller?

Ans. No.

Int. 45. Did you get cash for that 80 acres?

Ans. I was owing Thack Porter about $800; Joshua Porter, Thack Porter's father, give me a check on the 1st National Bank, if I
120 am not mistaken, of 3 or $400. I forget whether Thack Porter paid me the balance in money or settled it at the bank, (1st National.)

Int. 46. He paid you $5,000 for the 80, did he not?

Ans. Not quite that.

Int. 47. How much did it lack of that am't?

Ans. I think the am't paid was not far from $5,000. I think there was a little over 80 acres.

Int. 48. Did you not ask more for it than you got?

Ans. I did.

Int. 49. What did you ask for the tract?

Ans. As nigh as I can reccollect, $62½ per acre.

121 Re-examination by comp't's att'y:

Int. 1. Into whose hands did you give the notes you executed in favor of Martin, Brown, Mason, Diffenbaugh, & Bains, and also who wrote said notes; and if any money was paid to you, who paid the same to you? and if you were paid in any other way except the payment of money, state how and when were the notes made and given.

Ans. Hubbard, the cashier of 1st National Bank, wrote the notes, and he paid me the money. He might have given me credit for part of it. The notes were made and given at the 1st National Bank of Monmouth.

Int. 2. How were the deposits rece'd that you say you made in the 1st National Bank?

Ans. They were rece'd from the Chicago bank.

122 *Testimony of William J. T. Wallace.*

In the circuit court of the United States for the northern district of Illinois.

CHARLES E. GRANT, ASSIGNEE OF JOHN S. Miller, bankrupt,
vs.
FIRST NATIONAL BANK OF MONMOUTH, ILL'S, et al.

Present, John T. Morgan, register; James H. Stewart, counsel for comp'ts; John J. Glenn, counsel for respondents.

DECEMBER 23RD, 1872.

WILLIAM J. T. WALLACE, being called, examined, & sworn, deposes and says as follows:

Int. 1. State your name, age, residence, and occupation.

My name is W'm J. T. Wallace; my age, forty-seven; residence, Kelly Town., Warren County, Ill's; occupation, farmer & dealer in stock.

123 Int. 2. Are you acquainted with the parties to this suit, or either of them; if yea, how long have you known them, respectively, and are you acquainted with John S. Miller; if yea, how long have you known him?

Ans. I am acquainted with all the parties to this suit. Have known Grant, assignee, three years; have known W'm Laferty, pres't First National Bank Monmouth, and B. T. O. Hubbard, cashier, fifteen years; know John S. Miller, bankrupt, and have known him 37 years.

Int. 3. State whether or not you have ever had any connection in business with the said John S. Miller; if so, state the nature of said business, and how long it existed, and when.

Ans. I have been in partnership with Miller in buying hogs, cattle, & sheep, and feeding & shipping the same. Partnership commenced
124 Nov. 19th, 1868, and continued until June 7th, 1869. At different times after that we bought stock together and shipped them or

divided and fed them, but not in regular partnership. I was connected with him in borrowing money to carry on our business up to the 16th day of September, 1871.

Int. 4. You state, in answer to the last interrogatory, that you were engaged in borrowing money for your business; state whether or not you borrowed money jointly as a firm, or in what way it was done.

Ans. We borrowed it as individual money, by my going his security for him, and he going my security for mine.

Int. 4. Look at Exhibits G & H of the deposition of John S. Miller; state in whose handwriting the same are and by whom the same were made.

Ans. They are in my handwrite, and they were made by me
125 and Miller.

Int. 5. State whether or not the several amounts there named were in the shape of promissory notes; if yea, state by whom and to whom they were severally given; and if you were a party to any of the notes, state in what capacity, and whether as principal or security, and state particularly which of said notes were so executed by you.

Ans. Mason's was in the shape of a note, and I think made payable to B. T. O. Hubbard. I was security on that note for Miller. John Brown's was in the shape of a note. I think it was drawn payable to B. T. O. Hubbard. I was security on that. Baines' was also in the shape of a note. I think that was drawn payable to B. T. O. Hubbard. I was one of two securitie' on that; the other security was L. M. Gates, who
126 was also with me on Mason's note. Martin's note, I think, was also drawn in favor of Hubbard. I was security on that note. Diffenbaugh's note was, I think, drawn in favor of Hubbard also. The Jenks note, I think, was made payable to Jenks. I and Bradner Wixon was security on that note. The Mosier note was drawn in favor of Mosier and signed over to 1st National Bank of Galesburg. I was security on that also. The Second National Bank note was drawn in favor of the Second National Bank of Galesburg. I was security on that note. The Farmers' & Mechanics' Bank of Galesburg note was drawn in favor of the cashier of said bank, and I was security on it. The Ryner note, it was made payable to Ryner, and I was security on that. The Smith note, drawn in favor of Smith, and I was security on that note.
127 The balance of the debts on the exhibits mentioned I know nothing about, except what has been told me. The am't of these notes may not be exactly right, but is as near as we can come at it.

Int'y 6. State whether or not said Miller was security for the money borrowed by you; and, if so, in what am't, about the 16th of Sept., 1871.

Ans. Miller was my security on different am'ts to different men, to the am't of about 4,000.

Int. 7. State whether or not on said 16th of Sept., 1871, you were or were not insolvent.

Ans. Yes, sir; I was.

Int. 8. State, if you know the same, what am't in value of stock was shipped by Miller during the year previous to the said 16th of Sept., 1871.

Ans. I do not know; about all I know is that he was a large shipper.

128 Int. 9. State, if you know the same, whether said Miller made or lost money in his said business of shipping stock during said year.

Ans. If I and him counted it up right, he lost by shipping & feeding, and some losses we could not account for, over 8,000.

Int. 10. State whether or not, previous to the said 16th of Sept., 1871, you at any time, in connection with said John S. Miller, made a calculation of the am't of his indebtedness; if so, state when such calculation was made, by whom, and how you ascertained the am't of such indebtedness, whether from the statements of Miller or from your own knowledge; and state the am't of such indebtedness so calculated by you.

Ans. Some time the first of June, 1871, I and Miller made a calculation as near as we could of his indebtedness, partly by what I knew and partly by what he knew; we made out his indebtedness,
129 if I recollect right, about $17,500. We afterwards found out that the Martin note was left out, and the Baine & Sykes note and the Van Tassel note also, making about $3,500 in addition to the 17,500 that he then owed. There was, after that calculation was made, $500 paid to Mosier.

Int. 11. State whether or not, before the said 16th day of Sept., 1871, and after the calculation made by you and Miller in June, 1871, you had any conversation with either of the officers of said 1st National Bank of Monmouth, with relation to Miller's said indebtedness and his ability to pay the same; if so, state with whom and when you held such conversation, and state fully what such conversation was.

Ans. I think about the last of June, 1871, as well as I now recollect, I had a conversation with W'm Laferty, president of the bank.
130 I told M'r Laferty in that conversation that Miller would be obliged to mortgage his land. I asked M'r Laferty if he did not think it was the best thing that Miller could do. He said he thought it was. I told M'r Laferty that I was determined to cut loose from Miller, and that his land was no better than mine, and he would have to mortgage his as well as me. That is the substance of the conversation; there was more said, but I cannot recollect what it was. I and Laferty had another conversation; about the 10th of Sept., 1871, we had another conversation. I went to M'r Laferty to see if he could not help raise $10,000 on Miller's farm. He said he did not know where it could be had. He asked me how many fat cattle & hogs Miller had on hand; I told him he had not any. He said he thought Miller had both fat cattle & hogs yet on his farm. In the conversation I told M'r Laferty that I was getting shaky of Miller, and I was determined to cut
131 loose from Miller. About the time that I had the first conversation with Laferty, I think the same day, I had a conversation with B. T. O. Hubbard, cashier of the 1st National Bank. I asked M'r Hubbard if he knew when I could get $2,500, and mortgage one 80 acres of land. He said he thought I could get it of W'm Laferty. I told M'r Hubbard that I had lost a good deal of money, and I intended to mortgage my land, and that John Miller had got to where he would have to do the same. He said it was the best thing we could both do. I had another conversation with B. T. O. Hubbard, either on the 15th or 16th of Sept., 1871; he called me into the bank and requested me to see Miller and try to get him to give them a mortgage for what he owed them. I told Hubbard that I did not believe that Miller would do it; he said Miller had to do something, that he had run behind, I think, about $2,300. He said that he had been trying to get John to give
132 them a mortgage *them a mortgage* on two 80 acres of land, and for me to Miller if he would give him a mortgage on two 80s of his land; that it should not be put on record, and no one should know it except me and Miller & them, and that he would see if he could not raise in some way $10,000 on long time by Miller giving a mortgage on his farm. I went out on the street and saw Miller, and told Miller what

Hubbard said. Miller said that he was hard up, and wanted some more money; if I would see Hubbard, and he would let him have some $300, and keep the mortgage a secret, that he would do it. I (conversation between Miller & Wallace on the street objected to by respondent's counsel) *I* and Miller went to the bank. I told Hubbard what John said. He said he would let him have enough money, with the $4,000 note
133 that we then owed, and Miller's overdraft, to make out $6,500. Hubbard counted up what interest would be coming back on the $4,000 note, and what the overdraft was, and paid Miller somewheres from to three hundred dollars; that is all I know about the mortgage, and is about all the conversation I had with them that I now recollect.

Cross-examination by John J. Glenn, respondent's att'y:

Int. 1. Did you state in your conversations that you have testified about with Hubbard & Laferty, to them or either of them, the am't of Miller's indebtedness?

Ans. I think not.

Int. 2. The time you figured up the am't Miller lost during the year 1871, the most you know about his losses was what he told you, was it not?

Ans. It was, except what I knew of his losses in feeding hogs & cattle.

Int. 3. State what you know about his losses in feeding hogs and cattle.

134 Ans. I knew about what he paid for his hogs & cattle. I was in Chicago when his hogs and cattle were both sold; I know about what it took to feed them.

Int. 4. Is not what you knew about what he paid for his hogs and cattle what he told you?

Ans. I and him bought most of his cattle in partnership, and then divided them. The Hanna cattle and the Gilmore cattle I knew at the time what he had paid for them. I was known to most of the purchases on the hogs.

Int. 5. Who told you what he paid for the Gilmore & Hanna cattle?

Ans. I was at Miller's when the Hanna cattle were weighed and figured it up myself. Gilmore & Miller both told me what the Gilmore cattle cost. They were bought by the head.

135 Int. 6. Who told you how much he paid per pound for the Hanna cattle?

Ans. Hanna & Miller both.

Int. 7. Where did you have the conversation with Laferty that you have testified about?

Ans. The first conversation was near M'r Pillsbury's store, in Monmouth, Ill's. The second one was in the 1st National Bank.

Int. 8. Wasn't the second conversation after the mortgage had been given; that is, after Sept. 16th, 1871?

Ans. No, sir; it was not.

Int. 9. Didn't you go Miller's security in the 1st National Bank for money after the first conversation?

Ans. I and Miller was holden to the bank at the time of the first conversation for $ $4,000; that was on Miller's note; I was his security. Miller could not pay it when it became due, and I went his security on renewal rather than let the old note be protested.

136 Int. 10. Didn't you go on paper for Miller after that, to other parties, that were not renewals?

Ans. I think not, except it was about some costs in the cir. court.

Int. 11. How much did Miller loose on the cattle & hogs that he fed in 1871?

Ans. About $3,500.

Int. 12. Did not the most of Miller's losses for the year 1871 originate from keeping fast women and running with them?

Ans. Not that I know of.

Int. 13. Don't you know that he was in the habit of running with fast women, or with women that had a bad reputation for virtue?

Ans. If he ever had anything to do with a fast woman in a criminal sense of view, I do not know it.

137 Int. 14. Don't you know of his paying $500 for the privilege of sleeping with a woman of bad reputation for virtue during the year 1871?

Ans. I do not, sir.

Int. 15. Don't you know of his visiting houses that are commonly called houses of ill-fame?

Ans. Well, I don't know in what sense you would take that. He may have been there.

W'M J. T. WALLACE.

Subscribed and sworn to before me this 24 day of December, A. D. 1872.

JOHN T. MORGAN,
Register.

138 *Testimony of Frank W. Harding.*

FRANK W. HARDING:

Q. What is your name, age, occupation, and place of residence?

A. F. W. Harding; age, 25 years; occupation, a banker; residence, Monmouth.

Q. What was your occupation and where was your residence in the months of December, 1870, and January, 1871?

A. My occupation was assistant cashier of the Monmouth National. I resided in Monmouth.

Q. How long had you been acting in the capacity of cashier of that bank?

A. Since the 9th of November, 1870.

Q. Were you acquainted with John S. Miller, who afterwards became a bankrupt, at that time?

A. I was.

139 Q. State whether or not about that time he did business with the Monmouth National Bank; and, if so, how long and between what periods?

A. He did business with us from the commencement of the Monmouth National Bank until the 21st of January, 1871.

Q. In what business was the said Miller engaged?

A. Drover and stock-shipping.

Q. Please state the amount of business done by Miller with your bank, and the character thereof; and, if you can, produce a full statement of such transactions, and make the same a part of the answer to this interrogatory.

A. The character of his business was buying and shipping stock, and he checked on our bank for the payment of the same, and we received back the proceeds from commission-men in Chicago, deposited to our credit in Chicago. This is a full exhibit of the ledger of the busi-

140 ness done by him with the Monmouth National Bank, marked "Exhibit A," with the exceptions of some notes which may have been discounted by him, and may not appear on the books.

Q. State, if you know the same, why Miller ceased doing business with your bank about January, 1871?

A. Well, the reason we ceased doing business with him, we were not satisfied to pay his checks on the paper of W. J. T. Wallace on his note for security, as apparently Miller was doing a reckless business in shipping. I asked John Miller if he knew whether he was losing or making money in shipping, and if he knew how his account stood. He said he did not, but he was doing the big'est business of any man in the country; shipping more stock than any man in the country. That suggested
141 to the officers of the bank that if he did not know anything about his business, whether he was making or losing, with the large business he was doing, that they were not satisfied to continue to carry John Miller upon his and W. J. T. Wallace's paper. The vice-president of the bank spoke to M'r Miller, and desired him to give a trust-deed as additional security for the payment of the money loaned him. M'r Miller said he would not make any different paper; he would not make a trust-deed; he considered his and Big Wallace's paper sufficient security. Well, John Miller, about this time, shipped a large amount of stock which he had bought and which he may have had on his farm, and it payed up. This shipment payed the amount standing against him on the ledger, and we then told him (when he wanted to make a check on us for quite a large amount of money) that we could not
142 pay any more of his checks until he had put in other securities. Notwithstanding that, he said he was going to check on us, and did so, and we refused payment on his checks.

Q. What was the amount of his checks?

A. About $4,000.00, I think; I am not positive. These checks were brought in to us by the First National Bank of Monmouth for payment by M'r Young.

Q. Did said Miller, after your refusal to cash said checks, do any further business with the Monmouth National Bank?

A. My impression is that there was some paper still unpaid, in the way of notes which we had discounted, that he afterwards took up. We charged to his account and credited on note, at the time these shipments were made, all the money that stood to his credit after paying his overdraft, said notes being past due. There was a bal-
143 ance still unpaid after we quit doing business with him, which he paid on said notes.

Cross-examination by M'r Glenn:

Q. When M'r Young, of the First National Bank of Monmouth, presented the checks of Miller, did the Monmouth National Bank pay them?

A. We did not.

Q. Are you sure that it was M'r Young, of the First National Bank, that presented them?

A. I am.

Q. Were those checks made payable to the First National Bank of Monmouth?

A. My impression was that they were not.

Q. Had payment of the checks presented by M'r Young been refused before they were presented by him for payment?

A. They had not, though we had told M'r Miller that we
144 would not pay any checks that he might make on us.

Q. How many checks did M'r Young present, and what was the gross amount of the same?

A. I cannot state whether it was one or two checks, or what the gross amount was, though I think there was more than one check.

Q. Was there any money at that time to Miller's credit in the Monmouth National Bank?

A. I believe not. If there had been money enough to pay those checks, we would have payed them.

Q. Can you tell what day the checks were presented by M'r Young?

A. I cannot exactly, though my impression is that it was after the 18th. We had no evidence on our books that they had been presented.

145 Q. Were those checks finally taken up by the Monmouth National Bank?

A. They were not.

Q. Had the First National Bank of Monmouth payed the money on those checks at the time they were presented to the Monmouth National Bank for payment? Did M'r Young bring them there for collection?

A. I cannot say that they paid them, though it was customary for customers to go there with checks and take credit for them before they were presented to our bank for payment.

Q. What did you tell M'r Young when he presented them for payment?

A. I think I told him that I was not paying those checks to-day.

Q. While Miller was doing business with the Monmouth Na-
146 tional Bank, did you not keep him informed of the state of his account with said bank?

A. I do not know that I told him of the state of his account only when he might have asked how it stood, or when we balanced his pass-book.

Q. How frequently did he ask you of the state of his account, and how frequently did he have his pass-book ballanced during the time he did business with the Monmouth National Bank?

A. I cannot say how often he asked me of the state of his account; think he had his book balanced twice.

Q. Was he in the habit of making overdrafts during the time he did business with said bank?

A. Yes.

Q. How frequently was his overdrafts?

A. Nearly the whole time.

147 Q. Did you not tell him his account was overdrawn?

A. Yes; and he understood that he was using our money, and there was none to his credit. It was customary for him to ship and check for the payment of his shipment.

Q. When he did, the proceeds of the shipment was placed to the credit of Monmouth National Bank in Chicago?

A. Yes, sir.

Q. When was it you asked him whether he was losing or making money ship'ing stock?

A. It was some days previous to the throwing out of his checks.

Q. Did you ask him in the same question if he knew how his bank account stood?

A. I think I did.

148 Q. How long before that had you told him how his bank account stood?

A. I cannot say.

Q. Did you not tell him at the same time how it stood?

A. I do not recollect whether I did or not. I probably did.

Q. I will ask you again whether you cannot tell whether the checks presented by M'r Young were payable to the First National Bank or not?

A. I think they were not. They were in payment of stock that he had bought, and could not have been.

Q. Of whom had he bought stock?

A. I cannot say.

Q. Then why do you say they were in payment of stock?

149 A. Because he had told me the day before that he was going to check on us for the payment of stock.

(Objected to by M'r Glenn, because it gives the declarations of Miller, and because argumentative.)

Q. Then you have no recollection whatever, from the checks themselves, to whom they were payable?

A. They were not payable to the First National Bank.

Q. Why do you say they were not payable to the First National Bank when you cannot say to whom they were payable?

A. From the circumstances of the checks.

Q. What circumstances of the checks do you refer to?

A. Because he said the day before that he was going to check on us for that stock.

(Objected to by M'r Glenn because argumentative.)

Q. Did you read the checks?

A. I read the amount then called for.

150 Q. What was the amount?

A. I cannot say from recollection.

Q. How many of them were there?

A. There was one or two; I think there was more than one.

Q. Was there any payee's name in the checks presented by M'r Young?

A. My impression is there was. I do not recollect who the payee was.

Redirect by M'r Stewart:

Q. What did M'r Young do with the checks you have spoken of when you refused to pay them?

A. He was apparently surprised that we was not paying them, and took them back to the First National.

Q. You said, in answer to a former interrogatory, that there was some notes belonging to the Monmouth National Bank. State whether the amount of those notes appear on the transcript of your ledger

151 marked "Exhibit A"?

A. They do not.

Q. State from whom the bank procured those notes, and the amount of same, as near you can.

A. The amounts of the notes we had was $7,200. There was one of $2,000, one of $4,000, and one of $1,200, of different dates. I was not present when said notes were discounted.

By M'r Glenn:

Q. That was the amount of Miller's overdraft at the time of the ship-

ment you spoke of being made in your statement in your examination-in-chief as being made on the 10th of January, 1871?

A. $9,183.84.

Q. Did the bank at the time hold Miller's notes for $7,000, also?

A. I think they had not been payed unless they were due, and
152 I think they were not due.

Q. State what M'r Young said when you refused to pay the checks presented by him for the First National Bank of Monmouth.

A. I do not recollect, only he looked up surprised when I would not pay those checks.

Q. Did he say anything?

A. I cannot say.

153 *Testimony of Alexander Gibson.*

United States dis. court, northern dis. of Illinois.

IN THE MATTER OF CHARLES E. GRANT, assignee of John S. Miller, bankrupt,
vs.
FIRST NATIONAL BANK OF MONMOUTH, ILL., et al.

DEC. 28*th*, 1872.

Present, John T. Morgan, register; James H. Stewart, att'y for complainants; John J. Glenn, for respondent.

ALEXANDER GIBSON, of Warren Co., Ill's, being called, examined, and duly sworn, deposes and says as follows:

Int. 1st. State your name, age, residence, and occupation.

My name is Alexander Gibson; age, fifty-seven; residence, Spring Grove, Warren Co., Illinois; by occupation a farmer.

154 Int. 2. Do you know the parties to this suit, or either or any of them? If yea, who, and how long have you known them, respectively?

Ans. I have seen Cha's E. Grant, assignee, and am acquainted with W'm Laferty, president of the 1st National Bank, and B. T. O. Hubbard, cashier thereof; have known them eight or ten years.

Int. 3. State if you are acquainted with John S. Miller, bankrupt; if yea, how long have you known him?

Ans. I know him; have known him for fifteen or sixteen years.

Int. 4. State whether or not, on the 16th day of Sept., 1871, you were jointly indebted with said Miller to any one; if so, in what am't, and whether the same was evidence' by a note or notes; and, if so, to whom the same was or were payable, and at what time the same were
155 due, and in what capacity you signed the same, whether as principal or security?

Ans. I was jointly indebted with said Miller as his security on two promissory notes, one payable to Carson, due in August, 1870, and on one payable to W'm P. Sykes, due in June, 1870. Carson note was 900; the Sykes note was 500.

Int. 5. State whether or not said notes were due and unpaid on the 16th day of Sept., 1871, and whether the said notes have been paid up to the present time.

Ans. They were then due, and have not yet been paid.

Int. 6. State whether or not, in the fall or winter of 1871, you had any

conversation with any of the officers of the First National Bank of Monmouth with reference to any indebtedness owing by said Miller to
156 said bank, or with relation to a certain trust-deed or mortgage executed by said Miller in favor of said bank; if yea, state with whom and what officer of said bank such conversation occurred, when the same took place, and state fully such conversation.

Ans. I had a conversation with Henry Spriggs; he said he was one of the directors of the 1st National Bank. It was the last of November or the first of December, 1871. I was paying him some money, and told him I was glad I had the money, as I was like to get into a pretty bad snap with John S. Miller aforesaid. He asked me why. I told him I was bail for him for $900. I did not then know but what the Sykes note was paid, and he (Spriggs) said that was too bad. He also stated that he was one of the directors of the 1st National Bank, and they got suspicious of Miller the way he was carrying on business, and
157 that he owed about $4,000 to the bank, and they got at him to give a deed of trust to secure them what he owed in the bank, and he give it; that is all I know about it.

ALEX. GIBSON.

Subscribed and sworn to before me this 28th day of December, A. D. 1872.

JOHN T. MORGAN,
Register.

158 *Testimony of Chauncy Hardin.*

In the district court of the United States for the northern district of Illinois.

CHARLES E. GRANT, ASSIGNEE OF JOHN S. Miller, bankrupt, *versus* THE FIRST NATIONAL BANK OF MONMOUTH, Ill's, et al.	In the matter of John S. Miller, bankrupt. In bankruptcy.

The deposition of Chancy Hardin, of the county of Warren and State of Illinois, a witness of lawful age, produced, sworn, and examined, by agreement of counsel without notice, upon his corporeal oath, on the 10th day of April, A. D. 1875, at the office of Glenn & Matthews, in the city of Monmouth, county of Warren, and State aforesaid, before me, John W. Matthews, a notary public in and for said county, in a certain suit and matter in controversy, now pending and undetermined in said district court, wherein Charles E. Grant, assignee of John S. Miller, bankrupt, is plaintiff, and the First National Bank of Monmouth,
159 Illinois, is defendants, in behalf of said plaintiff. The said Chancy Hardin being first duly sworn by me as a witness in said cause, previous to the commencement of his examination, to testify the truth, as well on the part of the plaintiff as the defendant, in relation to the matters in controversy between the said plaintiff and defendant, so far as he should be interrogated, and being examined by James H. Stewart, esq., of counsel for plaintiff, (John J. Glenn, esq., of counsel for defendant, being present,) testified and deposed as follows:

Interrogatory 1st. What is your name, age, occupation, and place of residence?

Ans. to int. 1st. My name is Chancy Hardin; age, sixty years; occupation, a banker; residence, Monmouth, Illinois.

Int. 2nd. What was your occupation and where was your residence in the months of December, 1870, and January, 1871?

160 Ans. to int 2nd. My occupation was as vice-president of the Monmouth National Bank; my residence, Monmouth, Illinois.

Int. 3rd. How long had you been acting in the capacity of vice-president of that bank?

Ans. to int. 3rd. Since the organization of the bank. I don't recollect the date.

Int. 4th. Were you at that time acquainted with John S. Miller, who afterwards became bankrupt?

Ans. to int. 4. I was.

Int. 5th. State whether or not about that time said Miller did business with the Monmouth National Bank; and, if so, how long and between what periods?

Ans. to int. 5. He did business with that bank in December, 1870, and January, 1871, until the 21st day of January, 1871.

Int. 6th. In what business was the said Miller engaged at that time?

161 Ans. to int. 6th. Buying hogs and cattle; hogs more particularly.

Int. 7th. State, if you know the same, why Miller ceased doing business with the Monmouth National Bank in January, 1871.

Ans. to int. 7th. Because the bank threw out his checks—refused to pay his checks.

Int. 8th. State, if you know, why the bank threw out his checks.

Ans. to int. 8. Because Miller refused to give such security as I required him to.

Int. 9th. State what security you required him to give.

Ans. to int. 9. Mortgage or trust-deed on his farm.

Int. 10th. What was the amount of the checks refused to be paid by the bank at that time?

Ans. to int. 10. I don't recollect the exact amount. It was a large sum; three thousand dollars or more, as near as I recollect.

162 Int. 11th. Previous to the time of presentation of these checks, had the bank been paying Miller's checks?

Ans. to int. 11. They paid his checks up to January 21st.

Int. 12. State, if you know, why the bank refused to pay those checks unless Miller gave a trust-deed on his land.

Ans. to int. 12. He had no money there to pay them with, nor securities that were satisfactory.

Int. 13th. State whether or not said Miller had not, previous to January 21st, 1871, drawn on the Monmouth National Bank, and his checks or drafts been paid when he had no money or securities in said bank?

Ans. to int. 13. He had some overdrafts prior to that time.

Int. 14. If there was any reason on the 20th of January, 1871, why you did not pay his overdrafts at that time please, state it.

163 (Objected to because it has already been asked and answered by the witness.)

Ans. to int. 14th. Because he didn't give the required securities.

Int. 15th. If there was any reason why you required him to give a trust-deed or other securities at that time, please state it.

Ans. to int. 15. Because his former securities we didn't think ample for further overdrafts.

Int. 16. What was the nature of the securities formerly given by him prior to January 20th, 1871?

Ans. to int. 16. He gave his own note, with W. J. T. Wallace and a

man that was in his employ, as securities; and once or twice Bradner Nixon.

Int. 17. State whether or not said Miller offered to the bank his own note, with securities such as you mentioned in your answer to the
164 last interrogatory, to secure the checks that the bank threw out.

Ans. to int. 17th. He offered J. W. T. Wallace and his hired man, which was not accepted.

C. HARDIN.

I, John W. Mattheus, of the county of Warren and State of Illinois, a notary public in and for said county, chosen by agreement of parties to take the deposition of said Chancy Hardin, a witness whose name is subscribed to the foregoing deposition, do hereby certify that previous to the commencement of the examination of the said Chancy Hardin as a witness in said suit between the said Charles E. Grant, assignee of John S. Miller, bankrupt, plaintiff, and the said First National Bank of Monmouth, defendant, he was duly sworn by me to *satisfy* the truth in relation to the matters in controversy between the said plaintiff
165 and defendant, so far as he should be interrogated concerning the same; that said deposition was taken in the office of Glenn & Mattheus, in the city of Monmouth, county of Warren & State of Illinois, on the 10th day of April, 1875, and that after said deposition was taken by me, as aforesaid, the interrogatories and answers thereto as written down were read over to said witness, and that thereupon the same was signed and sworn to by said witness, the oath being administered by me at the place and on the day and year last aforesaid.

Given under my hand and seal the 10th day of April, A. D. 1875.

[SEAL.] JOHN W. MATTHEUS,
Notary Public.

(Endorsed:) Filed July 20, 1875. W'm H. Bradley, cl'k.

166 *Testimony of William Lafferty.*

Int. 1. What is your name, age, residence, and occupation?

A. My name is William Lafferty; age, fifty-five years; residence, Monmouth, Warren County, Illinois. I am president of the First National Bank, Monmouth, Illinois.

Int. 2. How long have you been president of First National Bank of Monmouth?

A. Since April, 1865.

Int. 3. Are you acquainted with John S. Miller; and, if so, how long have you been acquainted with him?

A. I am acquainted with John S. Miller, and have known him for the last fifteen or sixteen years.

Int. 4. Are you acquainted with William J. T. Wallace; and, if so, how long have you known him?

A. I have known Mr. Wallace about same length of time.

Int. 5. Has John S. Miller done business with the First National Bank of Monmouth since you have been president of the same?

167 A. He has.

Int. 6. How much of the time have you known him?

A. I cannot tell that.

Int. 7. Did he do business there during the years 1868, 1869, 1870, and part of 1871?

A. Yes; 1868, 1869, 1870, and a part of 1871, till the tenth of November of 1871.

Int. 8. State whether or not, at that same time, W. J. T. Wallace did business with said bank.

A. He was doing business there about the same time; whether it was the exact time or not I don't know.

Int. 9. What business was Miller engaged in during the time he did business with the First National Bank you have spoken of, during the time you have spoken of?

A. Buying and shipping stock.

Int. 10. What did you know of his pecuniary circumstances during the year of 1871?

A. Well, I did not know until about the middle of October about the indebtedness of John S. Miller.

Int. 11. What was his financial standing in the month of Sept., 1871, in the city of Monmouth and vicinity, where he did his business, or neighborhood where he did business?

168 A. I thought it good, and safe to do business with him?

(Answer objected to.)

Int. 12. What amount of real estate, prior to the 16th day of September, 1871, and during that year, did the said Miller own and have in his own name, and what was the market value of the same?

A. He had about three hundred and twenty-six acres, I believe, of land standing in his name. The value of it I don't know. I never saw the land.

Int. 13. Where was it situated?

A. In Spring Grove Township.

Int. 14. How far was it from Monmouth, and what was the nearest railroad station to said land?

A. About seven miles, I think, from Monmouth, and within some two or three miles of a railroad station.

Int. 15. Was his land under cultivation—improved?

A. I understood it was.

Int. 16. What amount of business did Miller do with the First National Bank of Monmouth during the year' of 1868, 1869, 1870, and until he quit in 1871?

A. Two hundred and thirty-seven thousand dollars.

169 Int. 17. State how you came to know anything about Miller's indebtedness in the month of October, 1871.

A. W. J. T. Wallace came to me and showed me the amounts; said he had been to Miller and got him to give him (Wallace) the amounts as near as he could, and showed those figures he had taken down in a small book.

Int. 18. State what time in October that conversation took place between you & Wallace.

A. About the middle, as near as I can recollect now, 1871.

Int. 19. Do you remember what Wallace said his condition at that time was, financially?

(Objected to.)

A. He said at that time he was hard up; that the amount of indebtedness they had figured up was somewhere near twenty-two thousand dollars.

(Answer objected to.)

Int. 20. Did you have a conversation with Wallace last of June, or about that time, near Pillsbury's store, in the city of Monmouth, in which Wallace told you that Miller would be obliged to mortgage his land, and asked you if you didn't think it was the best thing you could do, and you said you thought it was?

A. I have no recollection of any such conversation.

170 Int. 22. (This int. is in advance of its proper position.) State whether you had another *another* conversation with Wallace on or about the 10th of September, 1871, in which Wallace came to you to see if you would not help Miller raise ten thousand dollars on his farm, and you said you didn't know whether it could be had, and asked Wallace how many fat cattle and hogs Miller had on hand, and Wallace told you he had none, and that you said you thought Miller had both fat cattle and hogs yet on his farm; and that Wallace said in that conversation to you that he was getting "shaky" of Miller, and was determined to cut loose from him.

A. If there was any such conversation with Wallace I have not been able to call it to mind. I have thought the matter over, and I cannot recollect such conversations, but would not be positive there was none.

Int. 21. (This int. is one place behind its proper place.) In the same conversation did Wallace tell you that he was determined to "cut loose" from Miller, and that Miller's land was no better than Wallace's, and that he would have to mortgage his, as well as Wallace would his own?

A. I have no recollection of any such conversation.

Int. 23. State what you know about Miller's giving the trust-deed for the benefit of the 1st National Bank of Monmouth, dated the sixteenth day of September, 1871, and how the same came to be taken?

171 A. The first I knew of this note being taken was a conversation with Miller on that day, to my own knowledge. He came in there and was talking about giving a mortgage, and said he would give it for sixty-five hundred dollars, and wanted it only temporarily, as he was negotiating a loan with some parties in Galesburg for a loan of ten thousand dollars, which would clear up his indebtedness or fix up all his matters. The conversation I cannot now call to mind. He gave me the number of his land, and I went to the records to see if it was correct, and drew up the first deed myself.

Int. 24. Look at Exhibit F, attached to Miller's deposition, and state whether that is the memorandum of the number of lands you took from Miller, on the day you spoke of, in your answer to the last interrogatory.

A. This is in my handwrite, and was taken at that time, but not exactly as Miller gave it to me. He gave it to me in eighty-acre tracts. When I went to the records I found those to be fractional.

Int. 25. State for what purpose Miller gave you the number and description of his lands.

A. For the purpose of giving a trust-deed on the same.

172 Int. 26. What was the amount of Miller's indebtedness to the First National Bank at the time he gave you the number of his land to prepare the trust-deed?

A. Nearly six thousand dollars.

Int. 27. In what did that indebtedness consist?

A. I had a note of four thousand dollars, and nearly two thousand dollars overdrafts.

Int. 28. How much cash was paid to him at the time the first trust-deed was executed by him?

A. Two hundred dollars in cash, and the rest to his credit; in all, about three hundred dollars.

Int. 29. State what conversation you had with Miller at the time he gave you the numbers of this land for the purpose of drawing this trust-deed, if any, and state whether he on that day applied to you to get the money of you to relieve him of his indebtedness.

(Objected to.)

A. I had but little conversation with Miller in regard to it.

Int. 30. Did you tell Miller on that day, or about that time, that you guessed he had better not do much more business there until this thing was fixed up?

A. That conversation with Miller was after this trust-deed was given.

173 Int. 31. State about when this conversation, and what it was.

A. Some two or three weeks after the trust-deed was given, he was drawing out money a little faster than he was putting it in, and I objected to his having any more until he fixed things up.

Int. 32. State whether or not at the time, or before the trust-deed was given, you had any reason to believe that Miller was insolvent; and, if not, state what reasons you had for believing he was solvent.

A. I had no reason before that time to believe he was insolvent. I did not know the amount of his indebtedness. I knew he was the owner of a pretty large tract of land, and believed him good for his contracts.

Int. 33. State whether or not you know of his doing business with any other bank during the years 1868, 1869, 1870, & '71, except the First National Bank of Monmouth, of which you are president.

A. He did some business with the Monmouth National Bank during the latter part of the year 1870. That is all the bank I know of his doing business with, except the First National.

Int. 34. Did he cease doing business with the Monmouth National
174 Bank during the year 1870, and do all his business with your bank until the sixteenth of September of year 1871?

A. He commenced doing business again with us about the 14th of January, 1871, and continued up to November 10th or 11th, 1871. As for doing all his business with us, I cannot tell.

Int. 36. (This int. is wrong place.) What amount of business, or what amount of money was advanced to him, over and above the amount secured by trust-deed, after the 16th of September and up until the 10th or 11th of November, 1871, by your bank?

A. Six thousand eight hundred and twelve dollars and ninety two cents, ($6,812.92.)

Int. 35. (This int. is in the wrong place.) Did you have any knowledge of his doing business with any other bank from the time he quit the Monmouth National, except your own, up until the 11th of November, 1871?

A. I don't know of any he was doing business with. He was doing business right along, every two or three days, with us, all the time.

Int. 37. How far is Galesburg from the city of Monmouth?

A. Sixteen miles, I believe.

Int. 38. Did you have any knowledge of Miller borrowing money in Galesburg of any of the banks or individuals there during the *the* time he was doing business with your bank, and prior to the 16th of Sept., 1871?

175 A. I don't know, of my own knowledge, of his having any dealings up there. A good many of his checks in the east part of the county would go to Galesburg and be sent to the First National Bank here for payment.

Int. 39. What was Miller reputed as worth at the time the trust-deed was taken by First National Bank, in September, 1871?

(Objected to.)

A. I don't know what he was reputed to be worth. He had a pretty large farm free from encumbrance. His indebtedness I did not know.

Int. 40. Had you any knowledge of any suits being brought against him of any kind for the collection of debts?

A. I had not.

Int. 41. State what knowledge you had of Miller's indebtedness at the time the trust-deed was taken, on the 16th of September, 1871.

A. I knew he owed the First Nation. Bank nearly six thousand dollars and a note M'r Jenks held of about one thousand dollars; and if I knew of any others at the time I cannot think of them now.

Int. 42. Was the object of taking the trust-deed to gain a preference or to obtain a preference over Miller's other creditors?

(Objected to.)

A. 42. I did not so understand it. I believed Miller to be good for all he owed.

176 Cross-ex. of William Lafferty:

Int 1. During the years Miller did business with you, what kind of stock was he engaged in buying and shipping?

A. I understood it was cattle and hogs. I never see him ship any in my life.

Int. 2. Was he or not extensively engaged in that business?

A. Considerably so.

Int. 3. State the manner in which the business was conducted between him and the First National Bank.

A. He was sometimes borrowing money (giving notes) to do business on, and at other times we would advance overdrafts to do shipping with.

Int. 4. During the time you have mentioned, was Miller at any time in debt to the bank? If so, state how much of the period you have mentioned he was indebted to the bank.

A. I cannot tell without reference to my books.

Int. 5. During that period what was the amount of the largest indebtedness from Miller to the bank at any one time?

A. I cannot tell without reference to the books.

Int. 6. How was any such indebtedness secured to said bank?

177 A. When he gave a note I believe W. J. Wallace was generally his security. When it was overdraft there was no security except Miller himself prior to 16th Sept., 1871.

Int. 7. Up to 16th of September, 1871, had the bank ever been secured by mortgage or trust-deed or any Miller's lands?

A. It had not.

Int. 8. Did Miller tell you that the list of the lands given by him to you to be incorporated into the trust-deed were all the lands he pos'essed.

A. I do not think he said anything about it being all the lands he owned.

Int. 9. Were you in other way informed that that was all the real estate he pos'essed at that time?

A. Not that I know of.

Int. 10. Did you find any other lands in his name on the record?

A. I did not. I did not look for any.

Int. 11. Did you not, during the year 1871, and prior to sixteenth of September of that year, hear reports and rumors prejudicial to the financial standing of Miller?

A. There were reports in circulation that Miller was a little reckless in his habits. There were no reports that I ever heard that he was insolvent, or bordering upon it.

178 Int. 12. Where did Miller do business, similar to what he did with you, prior to 14th of January, 1871; and, if you know, for what length of time?

A. I do not know of my own knowledge, but I understand he did business with the Monmouth National Bank from October 8th, 1870, to January 14th, 1871.

Int. 13. On or about the said 14th of January, 1871, was there any amount paid by First National Bank to the Monmouth National Bank; and, if so, what amount?

A. About the 14th of January Miller made a note to us, giving J. W. T. Wallace as security, for 4 thousand dollars, which he said he owed the Monmouth National Bank. I do not know whether he paid them or not. Whether he owed them the amount of four thousand dollars I do not know, and have no means of knowing.

Int. 14. Why, in September, 1871, did you take a trust-deed, or mortgage, to the amount he owed the First National Bank, instead of permitting it to be secured as formerly, by note and overdraft?

A. All the answer that I can give is that he made arrangements with M'r Hubbard that if he would let him increase the overdraft he would give him a mortgage, and Hubbard insisted his doing it when he got two thousand dollars more than the four thousand dollars.

179 Int. 15. Had you not been informed before the sixteenth of September, 1871, that Wallace desired to be free from Miller's debts?

A. Not to my knowledge.

Int. 16. Is not Miller an illiterate man?

A. I think he is, rather so.

Int. 17. For what length of time was the interest calculated on the indebtedness to the bank, being nearly six thousand dollars, and to what did the same amount, the advance interest?

A. On the 16th of September, 1871, we took his note for sixty-five hundred dollars, running ninety-three days. Interest $167.90, (one hundred and sixty-seven dollars and ninety cents.)

Int. 18. For how much was the note taken?

A. For sixty-five hundred dollars.

Int. 19. You say that some two or three weeks after the trust-deed was given, he was drawing out money a little faster than he was putting it in. Had he never done that before in his business with the bank?

A. He had done it before.

Int. 20. How was the bank paid in its business with Miller during the time you have mentioned—the whole time?

A. He generally deposited the money in Chicago to our credit;

180 sometimes it would come by express to him, and he would deposit it in the bank; but generally it was deposited in Chicago to our credit.

Int. 21. Was that money received from sales made by him of stocks in Chicago?

A. I understood so.

Int. 22. Do you not know that for a year prior to the sixteenth of September, 1871, Miller had been selling on a falling market and losing money?

A. I don't know that I did. Miller generally said he did pretty well on his stock.

Int. 23. Did you not know that the market was during that time rather against shippers, just the year previous to September 16th, 1871?

A. I do not know that I did; I cannot remember.

Int. 24. You say that you knew at the time the trust-deed was taken that Miller was the owner of a pretty large tract of land. Did you know at that time of his owning any other real estate except the land that you have mentioned?

A. I did not.

Int. 25. Prior to the 16th of September, 1871, had you been informed in any way that Miller was indebted in Galesburg to the banks there?

181 A. I had not to my knowledge.

Int. 26. At and before the time of the taking of the trust-deed, were there any notes given by Miller sent to the First National Bank for collection one year prior to the taking of the same?

A. I think probably there was, but cannot tell whose, nor the amount

Int. 27. Were there any such notes in possession of the bank for collection at time the trust-deed was given?

A. Not that I know of.

Int. 28. Please to look at your books and state whether, during the time Miller did business with you, as you have stated, he was in debt to the bank generally, or the bank indebted to him; state which way the balance was; and also state the balance, as between Miller and the bank, during the whole time he did business with the bank; state it monthly; and the largest amount in said month, being the balance for and against said Miller.

182 *Testimony of B. T. O. Hubbard.*

Int. 1. What is your name, age, residence, and occupation?

A. My name, B. T. O. Hubbard; age, forty-one; occupation, cashier of First National Bank; residence, Monmouth, Ill's.

Int. 2. How long have you been cashier of 1st Nat. Bank, Monmouth?

A. Since the first of March, 1867.

Int. 3. Are you acquainted with John S. Miller?

A. I am.

Int. 4. How long have you known him?

A. Ten or twelve years, perhaps more.

Int. 5. Has he kept a bank-account in the First National Bank of Monmouth since you have been cashier?

A. He has.

Int. 6. For how long?

A. I could not tell exactly without referring to the books.

183 Int. 7. How long prior to the sixteenth of September, 1871, did John S. Miller do business with the First National Bank of Monmouth?

A. I think he has done business in his individual capacity since 1868. I will furnish a statement of his account and attach it to this deposition and mark the same "Exhibit Z."

Int. 8. What business was John S. Miller engaged in during the time you have been cashier of the First National Bank of Monmouth, and during which time Miller did business with said bank?

A. He was a farmer; and he also purchased and fed and shipped stock largely.

Int. 9. Was there any time during the year 1870 that Miller discontinued doing business with the First National Bank of Monmouth?

A. I think he did for a while.

Int. 10. With what bank did he do business during the time he discontinued doing business with the First National Bank of Monmouth?

A. I think with the Monmouth National, principally, if not wholly.

Int. 11. When, if at all, did he finally quit doing business with the First National Bank of Monmouth?

A. November 11th, 1871, the last transaction that the books show.

184 Int. 12. During the time that Miller did business with the First National Bank, did he borrow money?

A. He did.

Int. 13. Examine the papers now shown to you marked Exhibit D and E, attached to the deposition of John S. Miller in this case, and state how they came to be executed, and for what?

A. We had a note of his of four thousand dollars that we were carrying along, and which we had renewed several times at least; I don't remember how many. He wanted more money for the purpose of buying stock to put on his farm, (from two thousand to twenty-five hundred dollars,) and proposed, if I would advance him that, that he would take up the four-thousand dollar note and give us a trust-deed or mortgage to secure the whole; which I did, having advanced him the twenty-five hundred dollars, or thereabouts, a short time previous to the execution of this.

Int. 14. At the time the twenty-five hundred dollars, or about that amount, was advanced to Miller, what, if anything, was said at that time about his securing it by him?

A. When this advance of two thousand to twenty-five hundred was made him it was to be *be* repaid in a few days or short time, ("few days" was the expression,) by money that he expected to obtain in Gales-

185 burg; and, if not, then the mortgage was to be given, which we now have.

Int. 15. For what purpose did he say he wanted this money?

A. For the purpose of buying stock to put on his farm.

Int. 16. Who was present when the note and mortgage, marked Exhibits D & E, attached to the deposition of John S. Miller, were executed?

A. No one but William B. Young, R. M. Stevenson, and myself and Miller.

Int. 17. Where was it done?

A. In the First National Bank, on the sixteenth day of September, 1871.

Int. 18. Who furnished the description of Miller's land to make out said trust-deed, marked "Exhibit D?"

A. Miller made an effort to furnish it, or attempted to describe it, and then told M'r Lafferty to go to the records and get it for himself. After Lafferty got it, Miller came into the office, and they made a plat of the land, (M'r Lafferty and M'r Miller,) showing the position it occupied, each piece with the other.

Int. 19. What, if anything, was said about the trust-deed being on only the two south eightys of his land?

A. I did not hear any such conversation, but he gave us as near as he could the amount of land he had in round numbers.

186 Int. 20. Was there anything said about this being all of his land?

A. I think it did not embrace all that he had. That was the understanding.

Int. 21. State whether or not the trust deed marked "Exhibit D," attached to Miller's deposition, was read to him before he signed it.

A. It was, in full.

Int. 22. State what, if anything, he said when it was read to him, or whether he made any objection to it as it was read to him.

A. He said it was all right and made no objection to it whatever.

Int. 23. Did he sign it after it was read to him?

A. He did.

Int. 24. Was the note marked "Exhibit E" read to him before he signed it?

A. It was.

Int. 25. Did he sign the note and mortgage both at the same time?

A. He did.

Int. 26. Did Miller say to you, "I thought you was only going to take it on part of my land in place of all of it, because I would like to have got as much as ten thousand dollars," and you replied to him, "We
187 ain't buying your land. This is only gotten up temporarily, until you can do better."

A. There was nothing said about taking it on part of his land at that time.

Int. 27. Examine the paper marked "Exhibit F," attached to the deposition of John S. Miller, and state in whose handwrite said exhibit is, and whether or not the same was shown to Miller prior to his signing the trust-deed.

A. The exhibit is in the handwriting of William Lafferty, who was then president of the First National Bank of Monmouth, and was shown Miller previous to the trust-deed.

Int. 28. State what was done with said Exhibit F at the time it was shown him by Lafferty.

A. He said it was correct, and he and Lafferty made a plat of the land described in Exhibit F.

Int. 29. Was it after that that the trust deed was drawn up?

A. It was.

Int. 30. What was said, if anything, at the time the trust-deed was given, or about that time, about his indebtedness?

A. He wanted to get, or borrow on long time, ten thousand dollars. He said that would clear him up.

188 Int. 31. Did Miller tell you on the day the trust deed was executed, or the day before, in the First National Bank of Monmouth, in the city of Monmouth, that he was worth thirty thousand dollars and did not owe over ten thousand, or words to that effect?

A. He did tell me that. I think it was a day or two before trust-deed was executed he told me that.

Int. 32. Was it at the time he made arrangements with you to draw out the two thousand or twenty-five hundred dollars, and was to give a trust-deed for the same, together with the four-thousand-dollar note?

A. Yes; when he made arrangements to give me the trust-deed, that was the time he told me.

Int. 33. When he got the two thousand or twenty-five hundred dollars to buy stock to put on his farm, what, if anything, was said in the arrangement about his securing that sum?

A. This two thousand or twenty-five hundred dollars was drawn out at different times with the understanding that it was for the purchase of stock for this farm, and was to be replaced with money that he expected to get; and in the event that he did not get it, he was to give us a mortgage or trust-deed.

189 Int. 34. What, if anything, was said at the time of executing the note and trust-deed about recording trust deed?

A. He did not want it put on record, for he was sure he would have

the money in the course of a couple of weeks, and did not want to be to the expense.

Int. 35. Where did he say that he expected to get that money?

A. In Galesburg; ten thousand dollars.

Int. 36. On what time?

A. On several years' time; long time.

Int. 37. What rate of interest?

A. Ten per cent.

Int. 38. Why did he say he wanted to get the money on long time and not get it at the bank?

A. The bank could not loan him the amount desired and carry it along for him.

Int. 39. State what you know of Miller's indebtedness at the time of executing the note and the trust-deed marked "Exhibit D," and "E," respectively, on the 16th day of Sept., 1871.

A. I knew nothing of his indebtedness, aside from what he owed us, and two or three small notes, which I had got for him of other parties.

Int. 40. State the amount of Miller's indebtedness, or as near
190 as you can, that you knew of, at that time, aside from what he owed the First National Bank of Monmouth.

A. I think it was less than three thousand dollars.

Int. 41. State what, if anything, you know at that time, of borrowing money of the banks in Galesburg, Ill's, or whether or not you know of his being in debt to any parties in Galesburg, Ill's.

A. I know nothing of his indebtedness to banks in Galesburg.

Int. 42. When did you first learn of his indebtedness to Galesburg banks, or parties residing there?

A. I think it was a month or six weeks after the trust-deed was given. That is my impression now—some six weeks; perhaps six weeks.

Int. 43. Did you promise to give Miller three hundred dollars if he would execute the note and trust-deed referred to in Miller's deposition, Exhibit D and E?

A. I did not.

Int. 44. Were you acquainted with Miller's financial standing in the neighborhood at the time the trust-deed and note, marked "Exhibit D" and "E," attached to Miller's deposition, were executed?

A. I think I was.

Int. 45. State whether his financial standing was good or bad at that time.

191 A. It was on an average of other business men, so far as I know.

Int. 46. Did you know of his being sued prior to that time on any of his indebtedness?

A. I believe not.

Int. 47. You had borrowed money for him from other parties beside the bank, had you not?

A. I had.

Int. 48. How was that indebtedness met by him; promptly or otherwise?

A. He always paid or renewed, just as the parties desired, so far as I know or now remember.

Int. 49. State whether or not, at the time of execution of the trust-deed and note, on the 16th day of September, 1871, you knew that he was insolvent.

(Objected to.)

A. I did not have any idea of such a fact.

Int. 50. Did Miller tell you, the day he executed and acknowledged the trust-deed, or the day before, that he was worth thirty thousand dollars and did not owe ten, or words to that effect?

(Objected to as leading.)

A. He made the remark that ten thousand would clear him all up.

Int. 60. Did Miller tell you in the month of August, 1871, or
192 about that time, that he had lost money on his stock during the last year, or that he was running behind, or words to that effect?

A. I do not think he ever told me anything of that kind.

Int. 61. Did you have a conversation with W. J. T. Wallace about the 10th of September in which he told you he had lost a good deal of money, and that he intended to mortgage one eighty of his land, and that John Miller had got to where he must do the same, and you replied it was the best thing they both could do?

A. I did not have any such conversation as stated with him at that time.

Int. 62. Did you have a conversation with W. J. T. Wallace on the 15th or 16th of September in which you called him into the bank and requested him to see John S. Miller and try to get him to give the bank a mortgage for what he owed the bank, and Wallace told you he did not believe Miller would do it, and you said Miller had to do something; that he had run behind twenty-three hundred dollars, and you said you had been trying to get Miller to give a mortgage on two eighty-acre pieces of his land, and for him to see Miller, if he would give the bank
a mortgage on two eightys of his land, and that it should not be
193 put on record, and no one should know it except Miller and Wallace and the officers of the bank, and that you would see if you could raise the sum of ten thousand on long time for Miller, by Miller's giving a mortgage on his farm?

A. I never had any such conversation with J. W. T. Wallace.

Int. 63. Did you tell W. J. T. Wallace, on the 15th or 16th of September, 1871, that if Miller would give a mortgage on his land that you would let him have three hundred dollars more money and keep the mortgage a secret?

A. I did not have any such conversation with him.

Int. 64. Did you have any conversation with W. J. T. Wallace about Miller's giving the bank a mortgage, prior to the time of its being executed, for the indebtedness to the bank?

A. I do not think I did.

Int. 65. How long after the execution of the trust-deed and mortgage of September sixteenth, 1871, did Miller do business with the First National Bank of Monmouth?

A. About two months.

Int. 66. Was there any change in the manner of doing business with him after the 16th of September, 1871, until he quit doing business with the bank?

194 A. Not any; made checks for money and he shipped stock the same as before the trust-deed was given.

Int. 67.

Cross-ex. of B. T. O. Hubbard:

Int. 1. Between what dates did Miller discontinue doing business with the First National Bank during the years 1870 and 1871?

A. He ceased May 5th, 1870, and commenced January 14th, 1871.

Int. 2. State the reason, if you know, why so old a customer as Miller stopped doing business at the First National Bank May 5th, 1870.

A. He got mad.

Int. 3. What did he get mad at?

A. I think he got mad because I threw his check out. He had exceeded the limits I told him he could overdraw.

Int. 4. Do you remember how much he was overdrawn at that time?

A. I do not.

Int. 5. Do you remember the limits you set for him?

A. I do not.

Int. 6. The reason that he got mad was that you had dishonored his checks, and you would not pay them?

A. Yes.

195 Int. 7. What were the amounts of those checks?

A. I do not remember; I have no means of telling now.

Int. 8. State, if you know, the reason that Miller left the Monmouth National Bank January, 1871, and commenced business with the First National Bank.

A. I do not remember; I do not know.

Int. 9. Was not Miller at that time largely indebted to the Monmouth National Bank; and, if so, in what amount?

A. Not to my knowledge, and not that I remember now.

Int. 10. Did not the First National Bank at that time pay off Miller's indebtedness to the Monmouth National Bank; and, if so, to what amount?

A. I don't think they ever paid any indebtedness to the Monmouth National Bank.

Int. 11. Did not the First National Bank at that time furnish money or drafts to Miller for the purpose of paying off the Monmouth National Bank a debt owed it by him?

A. We might have loaned Miller money, but I do not know what he did with it, whether to pay debts there, or it runs yet; I did not ask him.

Int. 12. If you loaned him money, state how much you loaned at that time.

196 A. We loaned him four thousand dollars, but I do not know what disposition was made of it.

Int. 13. How did he secure the loan of the four thousand dollars?

A. By giving his note, with W. J. T. Wallace signed it with him.

Int. 14. Is that four thousand dollars a part of the amount that is secured by the trust-deed?

A. I think it is.

Int. 15. You say you do not remember how much you permitted Miller to overdraw about *about* the 5th of May, 1870, when you dishonored his draft. Did you permit him to overdraw a thousand dollars?

A. He made checks to the amount of twenty-six hundred dollars that day.

Int. 16. How much money did he have in the bank at the time he made those checks?

A. I don't think he had any. At that morning I find, on examination of my books, that he had a deposit made in Chicago the day before, that was credited to him of May fifth, of two thousand five hundred ninety dollars and sixty-one cents. It shows that he had about twenty-six hundred dollars to his credit that morning; just made one check; checked it out in one lump. So that there could not have been

197 any controversy about throwing out his checks at that time, but must have been some weeks previous. Made no checks for two months previous, neither had he any credits during that period.

Int. 17. When was it that you threw out his check, as near as you can recollect?

A. I could not give you any definite answer when it was. It was during the time he did business here, but as to dates I could not recollect that.

Int. 18. Have you any memoranda in the bank by which you could ascertain the time of the throwing out of the checks?

A. Not now.

Int. 19. You say at that time there was a limit beyond which you did not permit him to overdraw. State what that limit was as near as you can.

A. I could not give you any definite idea what that was; that varies from day to day owing to the condition of accounts and the circumstances of the bank. It usually varies from day to day.

Int. 20. Was that limit as much as one thousand dollar'?

A. I could not tell you. I don't remember the circumstances, just what they were, at the time the check was thrown out.

198 Int. 21. I see by the exhibit attached to your deposition that you paid a check of Miller's for five hundred and eighty-seven dollars and nineteen cents, March 3rd, 1870, which was the last check cashed by you until May 5th, 1870. How much did Miller owe the First National Bank on the said 3rd day of March, 1870?

A. On the third day of March, at the close of business, he owed us about twenty-three hundred dollars, which was made good March 4th and 8th by deposits in Chicago.

Int. 22. Was it on account he owed you that sum that you dishonored his overdraft?

A. I disremember the circumstances at the time. Those are varied from day to day, as I stated before. I cannot remember what they were, but I symply take cognizance of each day's transactions.

Int. 23. At the time you dishonored his drafts, as you have heretofore stated, was it because you thought it was hazardous to permit him to become farther indebted to the bank?

A. It was not.

Int. 24. What was the reason?

A. He had either exceeded the limit I had given him, or else made some other use of the money other than agreed to, when I gave him permission to make the check.

199 Int. 24. Did you always, when giving him permission to overdraw, stipulate how he should use the money?

A. Generally.

Int. 25. Why did you do so?

Custom. The custom was this: Where a party made arrangements for money for shipping purposes expressly, and used that for buying stock to put on his place, or made some other use of it than for shipping purposes, then I refused to honor his check.

Int. 26. Was this stipulation made in the interests of the bank?

A. All business transactions here are made in the interests of the bank.

Int. 27. If he was entirely solvent, what difference to the bank did it make whether he bought stock for his farm or used it for shipping purposes?

A. When he shipped stock, the [illegible] back at once; any other purpose it was uncertain when. [illegible] to manage our own business we have got to keep track of our funds, and know when they are coming back, when drafts are permitted.

Int. 27. When Miller overdrew on the bank, did you charge him any interest on the money so overdrawn; and, if so, at what per cent.?

200 A. I could not answer definitely. When a customer overdraws for shipping purposes, it was our custom to charge them one-fourth of one per cent. on all overrdrafts running over one to five days, the same as though they had made light drafts on Chicago for the same amount they overdrew.

Int. 29. Did Miller execute any other notes in favor of the First National Bank besides the one you have mentioned, given in January for four thousand dollars, and the renewals thereof; and, if so, how many such notes did he give to the bank, and does the giving of such notes appear on the Exhibit Z, attached to your deposition?

A. He gave one note of five thousand dollars, but that does not appear on this exhibit, being given previous to any date on this exhibit.

Int. 30. What other notes?

A. We might have had other notes and they might have appeared in this exhibit on the deposit side, and might not. That depended on whether the money passed to his credit or he took it in hand, but there were very few notes, if any, given.

Int. 31. You say you had borrowed money for him for other parties besides the bank. State from whom you borrowed such moneys, and in what amount from each.

201 A. I think there was twelve hundred dollars: one note to Samuel Bain; five hundred and some odd, of S. Y. Mason; five hundred of John Brown; five hundred of Diffenbaugh, and three hundred of M'r's Miner; of another widow, three hundred. I cannot state definitely the exact amounts of the notes, but that is very nearly the correct figures.

Int. 32. When were these several amounts borrowed by you for him?

A. I cannot state; some time within two or three years previous to his closing business with us.

Int. 33. What was done with the money so borrowed? Was it credited to Miller's account with the bank?

A. Sometimes it was so credited, and sometimes it was taken in hand.

Int. 34. What proportion was credited, and what proportion was taken in hand?

A. I could not tell.

Int. 35. At the time the trust-deed was executed by Miller, did you pay him any money over and above his indebtedness to you; and, if so, what amount?

A. I don't think I paid him any money the day the trust-deed was executed.

Int. 36. Did you agree to pay him any money?

202 A. I did not.

Int. 37. State in detail what was the consideration of that trust-deed.

A. On the 18th day of September I gave him a credit of $6,315.85 being the proceeds of a note given of sixty-five hundred dollars, less the interest on his overdraft, which was the amount of the four-thousand-dollar note we then held, and the amount of his overdraft, and about one hundred and thirty dollars more, credited to his account. I received the amount of the note, and the amount I had advanced him, a few days previously, and left his account good for one hundred and thirty-one dollars.

Int. 38. Did you converse with Wallace at all about Miller's affairs prior to the execution of the trust-deed?

A. I did not.

Int. 39. Prior to the time of the execution of the trust-deed, did you not hear that Miller had been caught in a bawdy-house in Monmouth, and took before a magistrate in Monmouth, and fined therefor; and, if so, how long?

A. I do not remember whether it was before or after, but I remember of hearing of the circumstances.

203 Int. 40. You say you borrowed from persons you have named the sums you have named, for Miller. I will ask you if some of those sums are unpaid at the present time.

A. I think they are. I think the most of them are unpaid.

Int. 41. You say that Miller ceased to do business with you the eleventh of November. Why did he stop doing business with you at that time?

(Objected to as not proper cross-ex., and as immaterial in the issues of this case.)

A. I cannot say whether he stopped from his own accord, or whether I insisted upon his giving us security of some kind, to indemnify us against loss by reason of overdraft.

Int. 43. Had not the directors of the bank required of you, or directed you to require, security for overdrafts?

A. No more from him than from any others doing the same business in the same way. It is a matter that was talked of often, that is, the matter of taking security for overdraft.

Int. 44. About the time of the closing of Miller's accounts, was it the custom of the bank in all cases to require security where men made overdrafts on the bank?

204 (Objected to because it is immaterial.)

A. It was. There is a positive order on the records to that effect.

Re-examination of B. T. O. Hubbard:

Int. 1. When Miller left the Monmouth National Bank and again commenced doing business with the First National Bank, did you have any reason to believe him insolvent?

A. I had not. If I had, I should not have allowed him to overdraw several thousand dollars, without any security, as I did often afterwards.

Int. 2. Did you hear any reports at that time derogatory to his financial standing?

A. I did not, having made diligent inquiry.

Int. 3. What was Miller reputed as worth at the time the trust-deed and note was taken, the sixteenth of September, 1871?

(Objected to.)

A. At least thirty thousand dollars over his indebtedness.

Int. 4. Why did you not make inquiry of the Monmouth National Bank, whether he was indebted there or not, when he changed his account from that bank to the First National Bank?

A. He came to me and said he had got offended at some of their rules or regulations and was going to cease business with them, and

205 wanted to come back. I did not suppose he was owing them anything, from my understanding. I saw the cashier of the other bank almost daily, and if he had had any suspicions as to Miller's solvency, he would certainly have told me.

Recross-examination of B. S. O. Hubbard:

Int. 1. You say Miller was reported to be worth thirty thousand dollars; did you have that information from any one but himself?

A. Yes; I heard others, farmers, speak of it; men living in his neighborhood.

Int. 2. When?

At various times previous to the closing of his business.

206 *Testimony of W. B. Young.*

Int. 1. What is your name, residence, and age, and occupation?

A. W. B. Young; age, 26; occupation, bookkeeper; place of residence, Monmouth.

Int. 2. What was your occupation in the year 1871, during the month of September of said year?

A. I was at that time in the First National Bank as bookkeeper.

Int. 3. Did you hold any office at that time; if so, what was it?

A. I was at that time notary public.

Int. 4. Did you take the acknowledgments, as said notary public, of a certain trust-deed made by one John S. Miller to John J. Glenn, for the benefit of the First National Bank, Monmouth, on or about the 16th day of September, 1871?

A. I took the acknowledgements of John S. Miller to said trust-deed as such notary public.

Int. 5. How long had you known John S. Miller prior to the
207 taking of said acknowledgements to said trust-deed?

A. I had known him at that time over three years, at least.

Int. 6. State whether said mortgage was read over to said Miller by you or some one else before he signed the same.

A. The mortgage was read to said Miller, immediately previous to his signing the same, by B. T. O. Hubbard. Hubbard read the same from beginning to end, including the acknowledgements.

Int. 7. Who prepared this trust-deed?

A. The blanks in this trust-deed are filled in William Lafferty's *name.*

Int. 8. Who furnished the numbers of Miller's land to W'm Lafferty for the purpose of preparing said trust-deed?

A. William Lafferty obtained a description of the land from the records in the recorder's office. John S. Miller described the location of those lands, but was unable to give the exact designation of them. He described them as being in Spring Grove Township, and thus a person might find them from the records.

Int. 9. Is Exhibit D, referred to John S. Miller's deposition, the same trust-deed you have been testifying about?

A. It is the same trust-deed to which I took the acknowl-
208 edgement, and of which I have been testifying about.

Int. 10. What was said, if anything, about trust-deed only being a temporary arrangement?

Ans. So far as I understood at the time, this trust-deed was to be in full force and effect until such a time as Miller should discharge his indebtedness to the bank, whatever amount it might have been.

Int. 11. What was said, if anything, by Miller to Hubbard, or any of the officers of the bank, about borrowing of some other party, on long time, ten thousand dollars, for the purpose of paying all his indebtedness, at the time this trust-deed was executed?

A. I understood him once to say that he could obtain, in Galesburg,

funds sufficient to set him afloat, to discharge all his indebtedness. He said this a day or two previous, say three days previous.

(Answer objected to.)

Int. 12. Was this conversation that you have detailed in your answer to the last interrogatory at the time or about the time he was negotiating to secure his indebtedness to the bank by trust-deed?

A. I should judge that it was three or four days, say three days, previous. It was within a very few days.

209 Int. 13. What representations, if any, did he make to any of the officers of the bank, about the time the trust-deed was executed, with reference to the amount of his indebtedness?

(Objected to.)

A. About that time he represented to B. T. O. Hubbard that ten thousand dollars would clear up his indebtedness; would set him afloat. I think his own language was, that much would set him afloat; clear up his indebtedness entirely.

Int. 14. Who was present when the trust-deed was signed by Miller, and when it was read over to him by Hubbard?

A. There were present at that time three persons: B. T. O. Hubbard, Robert M. Stevenson, and myself.

Int. 15. How long after the trust-deed was filled up by M'r Lafferty was it before it was signed and acknowledged by M'r Miller?

A. The trust-deed was filled up, I think, that forenoon, the forenoon of the same day on which it was signed. I would not be quite positive about that; tolerably certain that he filled it the same forenoon on which it was executed.

Int. 16. When Miller signed the trust-deed, what did he do with it?

A. He handed it to B. T. O. Hubbard?

210 Int. 17. What was said, if anything, about taking the acknowledgement of the trust-deed?

A. I took the acknowledgement immediately after. The acknowledgement was taken in due form.

Int. 18. Was the trust-deed marked "Exhibit D" filled up as it now is, and read over to Miller as it now reads, at the time Hubbard read it to him, that you have spoken of in this your deposition?

A. This is the same trust-deed that was read to John S. Miller on that occasion. The description of the land is the same—I believe it is the same—in every particular. It is the identical deed.

Cross-ex. of W. B. Youngs:

Int. 1. You say you knew Miller three years previous to the making of the trust-deed. Did he do business with the First National Bank during the whole of the three years, or was there intervals when he did not do business with the First National Bank?

A. He had done business one way or another more than three years as a shipper, running a regular account with us. I suppose he had not been doing business with us as long as three years, but his papers had frequently been discounted here previous to that time. I mean by doing business that *that* he was helped to money—got accommodations here. I should call it doing business constantly; he did not do his banking business anywhere else.

211 Int. 2. At the time Miller described the location of his lands, for the purpose of having them embodied in a trust-deed, did he say that was all the lands he had?

A. I don't think he made any representations with regard to that particular, at least not to my knowledge.

Int. 3. How did Miller say he could obtain money in Galesburg sufficient to set him afloat?

A. He said he could obtain it from the banks there.

Int. 4. Did he say he could obtain it by mortgaging his land?

A. I did not hear him make any such a statement as that.

Int. 5. Then he did not state how he could get it, did he?

A. He spoke positively of being able to obtain it.

Re-examination of W. B. Youngs:

Int. 1. Look at Exhibit E, attached to John S. Miller's deposition, and state whether that said instrument was signed by said Miller at or about the time the trust-deed was signed.

A. The transaction was completed at that time. The signature of the note and the execution of the mortgage were done at the same time.

212 *Testimony of R. M. Stevenson.*

Int. 1. What is your name, age, residence, occupation?

A. My name is R. M. Stevenson; occupation, bookkeeper First National Bank; age, 23 years; residence, Monmouth, Illinois.

Int. 2. What business were you engaged in the sixteenth of September, 1871?

A. I was teller of the First National Bank of Monmouth.

Int. 3. Examine the papers in this case shown to you, marked Exhibit D and E, attached to the deposition of John S. Miller, and state when you first saw them.

A. I first saw these on the day they were first executed, the sixteenth of September, 1871.

Int. 4. Who was present when said papers were executed?

A. B. T. O. Hubbard, W. B. Young, John S. Miller, and myself.

Int. 5. Where were they executed?

A. In the First National Bank.

213 Int. 6. State whether said trust-deed was read over to Miller before it was signed by him.

A. It was read over to him.

Int. 7. Was it read in such a tone of voice he could hear it?

A. Yes, sir; it was read in a plain tone of voice.

Int. 8. What did he say when it was read to him?

A. He said he was going to get ten thousand dollars at Galesburg, and that would pay all the debts he had.

Int. 9. What, if anything, did he say about what he was worth and what he owed?

A. He said ten thousand dollars would pay what he owed. I don't remember of his saying how much he was worth.

Int. 10. Did he make any objection to signing said trust-deed or note when it was read over to him?

A. He did not.

Int. 11. Was the note read over to him before he signed it?

A. Yes, sir.

Int. 12. Is there anything else you know about this matter?

A. I believe that is all. That is about what I know about it. I was there for that purpose.

214 Cross-examination of R. M. Stevenson:

Int. 1. Who read that trust-deed at that time to Miller?

A. I don't remember who read it to him. It was either M'r Hubbard or M'r Young; one of those two read it to him.

Int. 2. Did you hear all that Miller said on that occasion?
A. I did.
Int. 3. How far were you from him?
A. I staid right beside him.
Int. 4. Where was he?
A. He was behind the counter, back at the bookkeeper's desk. We were all there together.
Int. 5. Were you called on to listen what he said on that occasion?
A. Yes, sir.
Int. 6. Who asked you to do so?
M'r Hubbard.
Int. 7. Was William B. Young asked to listen what he said on that occasion?
A. I don't know whether he was or not; he took the acknowledgement of the deed.
Int. 8. Did M'r Hubbard give you a reason why you should listen to what he said; if so, what was it?
A. I don't remember he gave me any reasons.
215 Int. 9. You were there as witnesses?
A. Yes, sir; and signed the deed.
Int. 10. Did not Miller in that conversation claim that he was to give his mortgage on only part of his farm?
A. I don't remember that he did claim anything of the kind.
Int. 11. Did Miller in that conversation say that he would give a mortgage or trust-deed on all his land?
A. I don't remember that he said anything about how much he would give a mortgage on, or anything of the kind.
Int. 12. Did you ever see Miller's farm?
A. I have been past it. I don't know how much he has, but have been past his house.
Int. 13. Do you know whether Miller did mortgage all his land or not?
A. I don't know that he did.
Int. 14. Do you know how much land was mortgaged at that time?
A. I don't know.

Re-examination of R. M. Stevenson:

Int. 1. As I understand you, in your cross-examination you say that M'r Hubbard asked you to be a witness to the trust-deed. Did you, in consequence of what M'r Hubbard asked you, sign your name as
216 witness to said trust-deed? And now take trust-deed or exhibit marked "D," that is attached to the deposition, and state whether or not it is your signature which is signed to the same as witness.
(Objected to for the reason that he did not say in his answer to my question that M'r Hubbard asked him to sign it as witness.)
A. I was there for that purpose, and signed it for that reason. That is my signature.
Int. 2. Are you the same R. M. Stevenson whose name is attached to said trust-deed as a witness?
A. I am.

217 *Testimony of J. H. Spriggs.*

Int. 1. What is your name, age, occupation, and place of residence?
A. Name is J. H. Spriggs; age, 52, or nearly so; occupation, druggist; residence, Monmouth.

Int. 2. Were you acquainted with John S. Miller on the sixteenth of September, 1871, and prior to that time; and, if so, how long had you known him?

A. I knew him by sight, but had no personal acquaintance with him; knew him as a man and neighbor living in the country.

Int. 3. You were acquainted during the year with Alexander ?

A. Yes, sir; I knew him for a number of years.

Int. 4. Did you have a conversation with him, on the last of November or first of December, 1871, in which you stated to him you were one of the directors of the First National Bank of Monmouth, and that the bank got suspicious of Miller, the way he was carrying on business, and that he owed the bank about four thousand dollars, and they got
218 him to give a deed of trust to secure them for what he owed the bank, and he gave it?

A. That was a conversation passed between him and me. He owed me some money, and he came in and remarked he was security for some of John S. Miller's debts. I don't recollect whether he stated the amount or not; and in that conversation he asked me whether I was a director of the bank. I told him I was, and he asked me, further, whether John S. Miller owed the bank. I told him I believed he did. I had not examined the papers, and did not know what amount, but that he had given a deed of trust for it, and the word "suspicious" was not used at all, to my recollection, on either side. Further than that, afterwards he had been doing business right along with the bank. There was nothing said about "suspicious" at all. I don't think that word was used on either side.

Cross-ex. of J. H. Spriggs:

Int. 1. Did you tell M'r Gibson in that conversation that the bank got Miller to give a deed of trust?

A. I did not tell him they got Miller to give them a deed of trust. I told him he had given them a deed of trust. There was no specified amount, but he did not tell me of any specified amount. Did not know what amount it was. I was not on a committee to examine the notes, and did not know what the amount was.

219 Int. 2. How often do the directors of the bank meet?

A. Once a month.

Int. 3. Do you always attend?

A. Yes, sir.

Int. 4. Prior to the sixteenth of September, 1871, was there anything said amongst the directors with relation to Miller's financial standing and the amount of (money) debt he owed the bank?

A. Those reports are made quarterly. I cannot say whether there was or not. There was so many things talked of, I didn't try to remember any particular thing.

Int. 5. Who was the examining committee at that time?

A. M'r Jenks, M'r Martin, and myself.

Int. 6. What was the date of the last meeting prior to the sixteenth of September, 1871?

A. The first Friday in the month is the regular meeting of the directors, but this question I cannot answer. Sometimes near the middle of the month, and sometimes near the last quarter. I never charged my memory with the dates. We would go into the bank and divide off the work. M'r Jenks made a proposition with M'r Martin and I, if we would do the balance of the work he would overhaul the notes, and on that account I don't know who examined the notes at that time.

220 Int. 7. I want to call your attention to the time when this examining committee met just before the sixteenth of September, 1871.

A. The regular time would have been the end of the quarter, but may have been afterwards. The end of the quarter would have been the last of June. I would only be on that examining committee every six months. There were three on six months and three on the other six months. I do not know which six months I was on, for I do not keep any account.

Int. 8. Did said examining committee examine into the matter of overdrafts?

A. Yes, sir; at the quarterly meeting.

Int. 9. Do you recollect of your attention being called to any overdraft of Miller at that time?

A. I cannot answer, for I don't recollect, and it may have been the case and it might not have been the case; I could not say positively one way or the other. I can say that the deed was given, and I do not know anything about when it was given. That is a matter that was in the hands of a cashier.

Re-examination of M'r Spriggs:

Int. 1. If there had been any doubts expressed by any of the directors of the bank, in any of their meetings, about Miller not being
221 good, or the bank not being secured for what he owed, would you have remembered it?

A. If that question had been brought up before the board, and our attention called to it, it would have been recollected. I could have recollected a portion of what transpired. I have no recollection of a point of that kind being raised.

Recross-examination of M'r Spriggs:

Int. 1. When did you first act on the examining committee?

A. I first acted in that year, in the month of January, the first quarter.

Int. 2. When next?

The third quarter; that would come in July.

Int. 3. When did you make your examinations in the quarter commencing July?

A. It was at the latter part, at the close of the quarter. The examination was generally made the night or so before the quarter was out.

Int. 4. When was it?

A. The report was generally written up the same night the work was done. It was just within a day or two before the regular meeting, which was on the 6th of October, 1871.

222 *Testimony of J. G. Moore.*

Int. 1. What is your name, age, residence, and occupation?

A. Name is J. G. Moore; age, 39; occupation, farmer, and kind of stock-shipper, both; residence, Monmouth.

Int. 2. Where were you doing business during the year 1871, and where did you reside during that year?

A. In Monmouth. I was buying and shipping stock, that season, principally.

Int. 3. How long previous to that year had you been engaged in stock business, and when?

A. Since the spring of 1865, in Mercer, and Warren, and Henderson countys.

Int. 4. Are you acquainted with John S. Miller?

A. Yes, sir.

Int. 5. How long have you known him?

A. I suppose fifteen years, probably; might be a little longer; might not be quite so long.

Int. 6. What business was he engaged in since you commenced stock business in 1865?

A. Farming and feeding stock, for a few years; after that, shipping and buying stock.

223 Int. 7. Did he buy stock in the same neighborhood or section of country you did, after you commenced in 1865, and on up until sixteenth of September, 1871?

A. He did.

Int. 8. During the year 1871, and prior to that time, what amount of business did John S. Miller do as stock-man?

A. He done a big business; a large amount of business and trading.

Int. 9. Were you acquainted with Miller's general financial standing in the neighborhood that he did business during the year 1871, and up until the 16th of September of said year?

A. I know that he traded a good deal.

Cross-examination of M'r Moore:

Int. 1. I understand you, M'r Moore, that during that year Miller gave good prices. Did he give more than other purchasers of stock? (Question objected to.)

A. He generally did.

Int. 2. I will ask you if the year 1871, prior to September sixteenth, was not a pretty hard year on the purchasers of stock? Did not a good many of them lose money?

A. I guess they did some, more or less; yes, sir.

(Objected to because not proper cross-examination.)

Int. 3. I will ask you if you heard any persons say anything about Miller's financial standing or his business habits, in the year 1871, prior to the sixteenth of September?

224 A. Nothing more than talk about his trading; yes, sir.

Int. 4. What was said at such times by such persons?

A. I have heard them speak about selling stock to him, and what he paid them, and so on.

Int. 5. Did you ever hear it said that Miller was losing money during that time?

A. I believe I have heard men say so; whether they knew it or not, I don't know.

Int. 6. Did you often hear things said unfavorable to Miller's financial standing and to his solvency during that time?

A. No, sir; I think not; not very often, at least.

Int. 7. You did hear some?

A. I might have heard an outside whisper once in a while.

Int. 8. Do you know *whether More* procured money on which he did business?

A. I know where he procured a portion of it; at the Monmouth banks.

Int. 9. Do you know about September 16th, 1871, what was the amount of his, Miller's, indebtedness?

A. I cannot tell. I don't know anything about it.

Int. 10. Then, of your own knowledge, you don't know whether he was solvent or not?

A. No; I don't know as I did.

Int. 11. Are you in the stock business now?

A. Yes, sir.

225 Int. 12. Do you borrow money from either of the Monmouth banks; and, if so, from which?

A. I do. The First National Bank.

and paid for the stock. I never heard that he did not pay for what he bought. He paid me for what he bought of me.

Ins. 10. What was Miller's general reputation and standing as a business man *upon* until the sixteenth of September, 1871; was it good or bad?

(Question objected to.)

A. I don't know exactly the time that he went up. I guess it was good. People always talked that he would pay pretty good prices when he came round; if they could not get their price they would wait until Miller came around.

Int. 11. Whereabouts was his farm that he lived on during the year 1871?

A. North part of Warren County, in Spring Grove Township.

Int. 12. Were you at it during the year 1871?

A. Yes, sir; fore part of 1871.

Int. 13. What kind of a farm was it, and how large?

A. It was a good farm, a large farm. I can't tell the number of acres.

Int. 14. How was it stocked, if at all, in the fore part of 1871?

A. It was pretty heavily stocked.

Int. 15. What time in the year 1871 were you there?

226 A. In February, and I think in May; I am not positive.

Int. 16. How was it stocked in May?

A. I think not so heavy in May, but considerable; the cattle were gone then.

Int. 17. What improvements were on said farm?

A. A good barn, comfortable house, and good fences.

Int. 18. Were you acquainted with the market value of land in the neighborhood in which Miller resided during the year 1871, and in the month of September, 1871?

A. I don't think I was.

Int. 19. How often were you with Miller during the year 1871, and prior to the sixteenth of September of said year?

A. I could not answer you that; very often, though; a number of times.

227 *Testimony of William Flack.*

Int. 1. What is your name, age, residence, and occupation?

A. William Flack; age, 41 years; occupation, farmer and stock-dealer; residence, Monmouth Township, Illinois.

Int. 2. What business were you engaged in prior to sixteenth of September, 1871, and where?

A. I was engaged in dealing in stock in this and adjoining counties, and farming.

Int. 3. State whether you were acquainted with John S. Miller on the

sixteenth of September, 1871, and how long prior to that time you had been acquainted with him.

A. I am, and have been acquainted with him for about fifteen years.

Int. 4. State whether or not you had any dealings with him about the sixteenth of September, 1871, and prior to that time.

A. I cannot state just exactly whether at that time or not, just to a month, but I have had dealings with him at that same year, and for the last six or seven years, on and off, trading with him. I have bought of him and sold to him.

228 Int. 5. What did you deal with Miller in, or what did you buy of him and sell to him?

A. I bought hogs of him; a great many hogs; and sold hogs to him, and cattle, too.

Int. 6. State whether or not you are acquainted with John S. Miller's financial standing on the sixteenth of September, and prior to that time?

(Objected to.)

A. I would hardly know how to answer that question; that is, about what his standing was.

Int. 7. Were you acquainted in the neighborhood or section of country in which John S. Miller did business prior and up to the sixteenth of September, 1871?

A. I was well acquainted at that time and prior to that time.

Int. 8. State whether or not you were acquainted with John S. Miller' reputation for solvency in the neighborhood or section of country in which he did business, prior and up to the sixteenth of September, 1871.

A. I was acquainted with it.

Int. 9. Was that reputation good or bad?

(Objected to.)

A. Good, I would think.

229 Cross-examination of Flack:

Int. 1. Who did you hear talking of Miller's solvency or insolvency prior to the sixteenth of September, 1871, and when did you hear such conversation?

A. I couldn't say. I would not know hardly how to answer that question. I don't know in what shape to answer it. I could not say who nor where.

Int. 2. Did you, prior to the sixteenth of September, 1871, hear anything said against Miller's solvency?

A. I did not.

Int. 3. During the year 1871, and prior to the sixteenth of September, did you hear anybody say that he was solvent, and, if so, who?

A. I could not answer that question.

Int. 4. Then, when you say his reputation was good, you say it from what you yourself know of his circumstances?

A. Yes, sir; because I done business with him backwards and forwards. I have been with him, and see him do a good deal of business with other men, and he always paid promptly; and I considered it as good as anybody does who is doing business. I see him buying and selling a good deal of stock, and he always paid up promptly, as well as the balance of us. He done a great deal of trading, and all men
230 that he done trading with always considered him a first-class man and good pay.

Int. 5. Was not the year 1871, prior to sixteenth of Sept., a bad year for stock-men.

A. I don't know that it was. I would say I considered it to be just as good that year as any other, where a man had not his stuff contracted, but bought on the market.

Int. 6. What do you mean by bought on the market?

A. I mean to buy it to-day for what it is worth, and ship it.

Int. 7. I will ask you, don't you know that many men lost money by buying on the market and going to Chicago, and finding a falling market there, that year?

(Question objected to because not proper cross-examination, and irrelevant.)

A. I suppose there were some parties that year as well as every other year. No year that I have been trading but what there has been a falling market sometimes.

Int. 8. Were you an intimate friend of Miller's?

A. No more than as a tradesman.

Int. 9. You were in the same business that he was?

A. Yes, sir.

Int. 10. Do you know whether Miller lost money at any time during that year, prior to the sixteenth of September, on stock purchased and sold by him?

231 A. I could not say that I did, for I did not see his bills or anything of that kind. Still, we would talk, on and off, of our gains and losses, with each other.

Int. 11. Do you know how much Miller owned? If so, state the same.

A. I don't know the number of acres.

Int. 12. Do you know how much money he at any time prior to the sixteenth of September, 1871?

A. Only from what he told me.

Int. 13. Were you ever at his farm?

A. Yes, sir.

Int. 14. During the summer of 1871, do you know how much stock he had on his farm?

A. I did not.

Int. 15. On the sixteenth of September, 1871, do you know whether Miller was then indebted to any one, and how much his indebtedness was? If so, state.

A. I do not.

Int. 16. Do you know anything about his indebtedness at any time during the year 1871, prior to the sixteenth of September?

A. I do not.

Int. 17. Then you don't know what his peculiar circumstances were during that period?

A. No more than as I said before, in the way in which he did business, seeing him pay for everything he bought, so far as I was with him.

Int. 18. How often were you with him at that period, and at what places?

232 A. I was with him pretty often, at Monmouth, Spring Grove, Alexandria; sometimes once a week, sometimes twice a week, sometimes more.

Int. 19. Who did you see him pay money to, and how much, during that year 1871, and previous to September?

A. I could not answer that question. I could not say how much or who to. I see him do business along with a good many men, and give checks, but could not tell who they were nor the amounts.

Int. 20.

Re-examined:

Int. 1. How near did you live to Miller during the year 1871, up until the 16th of September of that year?

A. I would think it would be in the neighborhood of nine miles.

Int. 2. How far do you live from Monmouth?

A. Three miles.

Int. 3. In what direction do you live from Monmouth?

A. Due north.

Int. 4. On what road?

A. On the Rock Island Road.

Int. 5. On what section; do you remember?

A. No, sir.

Int. 6. Were you at Miller's farm during the year 1871, prior to the sixteenth of September of said year?

A. I think I was.

233 Int. 7. What kind of a farm did he occupy at that time, and what was the size of it?

A. It was a very good farm; a large farm. I could not say the number of acres.

Int. 8. How was it stocked?

A. It generally had a good many hogs and a good many cattle and horses on it, and pretty highly stocked.

Recross-ex. of Flack:

Int. 1. Why did you answer that you did not know how much stock Miller had on his farm in the summer of 1871, and was that answer true?

A. I never knew the actual amount, only that there was a great deal of stock on the farm. He claimed that he owned it. I never knew the amount of stuff he owned. I don't pretend to know whether he owned it or some other man owned it. I could not tell. He always claimed to own it. It was not my business to find out.

Int. 2. Can you now state how much stock Miller had on his farm in the summer of 1871?

A. I cannot.

234 *Testimony of W. B. Jenks.*

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

Deposition of W. B. Jenks, of the city of Chicago, in the State of Illinois, a witness, aged forty-seven years, or thereabouts, produced, sworn, and examined on the fourth (4th) day of February, in the year of our Lord one thousand eight hundred and seventy-five, (A. D. 1875,) by me, Henry B. Mason, a notary public in and for and residing in said city of Chicago, in the county and State aforesaid, at my office, room number eighteen, (18,) at number ninety-four (94) Washington street, in said city, in the county and State aforesaid, in compliance with an agreement between Delos P. Phelps, esquire, counsel for complainants next below mentioned, and John J. Glen, esquire, counsel for defendants next below mentioned, said counsel on both sides being present at said examination, to be used in a certain suit and matter in controversy, wherein Charles E. Grant, assignee of John S. Miller, bankrupt, is complainant, and First National Bank of Mon-

235 mouth, William Lafferty, B. T. O. Hubbard, and John J. Glenn

are defendants, now pending and undetermined in the circuit court of the United States for the northern district of Illinois.

The said W. B. Jenks, being first duly sworn by me as witness in the said cause, previous to the commencement of his examination, to testify the truth in relation to the matters in controversy, so far as he should be interrogated, testified and deposed to the following oral interrogatories, as follows:

Interrogatories propounded to aforesaid witness by counsel for defendants, and the answers of said witness thereto, on the direct examination.

Int. 1. What is your age, name, residence, and occupation?

A. W. B. Jenks; Chicago; age, 47 years; merchant.

Int. 2. Where did you reside prior to coming to the city of Chicago?

A. Monmouth, Warren County, Illinois.

Int. 3. How long did you reside there?

A. Something over 23 years.

Int. 4. Were you acquainted, while you resided in Monmouth, with John S. Miller, bankrupt, of whom Charles E. Grant, the complainant in this suit, is assignee?

A. I was.

236 Int. 5. How long did you know him?

A. From 15 to 20 years.

Int. 6. While you resided in the city of Monmouth were you connected in any way with the First National Bank of Monmouth; and, if so, in what capacity?

A. I was, as stockholder and director.

Int. 7. For how long were you a director?

A. From the year 1864 or 1865, as I remember, until I sold out to come to Chicago, in May, 1873.

Int. 8. What position, if any, did you hold as director during the year 1871?

A. Well, I was a member of the exchange committee.

Int. 9. Who constituted the exchange committee?

A. The president, cashier, and one director.

Int. 10. What were the duties of exchange committee in said bank?

A. We passed upon notes which we discounted, and to ascertain the standing, financially, of the makers of the notes.

Int. 11. State whether or not, during the year 1871, any loans were made to John S. Miller by said bank.

A. There were loans made to Miller by said bank.

Int. 12. State what said Miller's financial standing was in the month of September, 1871, in the city of Monmouth and vicinity.

237 A. It was undoubted, in my opinion, as far as I know.

Int. 13. What other business were you engaged in during the year 1871 aside from your connection with said bank and for some time before that?

A. The lumber business, from 1857 to spring or summer of 1871, with the exception of about a year, something over a year, in 1864 and 1865, I loaned more or less money, on from 1864 until I left Monmouth.

Int. 14. Over what part of Warren County extended your business?

A. Over the whole. I sold lumber in every township in Warren County, I think.

Int. 15. What amount of money did you have loaned in Warren County during the years 1870 and 1871?

A. Oh, between fifty-five and sixty thousand dollars.

Int. 16. What amount of real estate did John S. Miller own during the year' 1870 and 1871?

(Question objected to by M'r Phelps, complainant's attorney.)

A. I think something over three hundred acres; that is my recollection.

Int. 17. What kind of land was it?

A. It was mostly pra'rie-land; good pra'rie-land.

Int. 18. What knowledge, if any, did you have of said land, and when did you see it, prior to the 16th of September, 1871? And
238 if you went to see it shortly prior to said time, state why you went.

A. Well, I saw it that summer prior to September, 1871. I can't tell exactly what month I went to see the land for myself. That is the knowledge I had of it. I had known it more or less for ten years.

Int. 19. State what portion of said Miller's farm was under cultivation, and what improvements were on it.

A. My impression is it was all fenced. There was a very nice barn he had built a year or two before, and a comfortable house, not very valuable.

Int. 20. State whether or not you are acquainted with the market-value of farming-lands in Warren County, in September, 1871.

A. Well, I was somewhat acquainted.

Int. 21. State what the market-value of said John S. Miller's farm was at that time.

A. I think it was worth $50.00 an acre.

Int. 22. State whether or not while you were engaged in the lumber business in Warren County said John S. Miller did business with you; and, if so, how long before you quit the lumber business did he cease to do business with you, and what was the extent of his business during that time?

239 A. He did business with me, and continued to do more or less business with me in lumber until I closed. He bought lumber for his nice barn which cost from twenty-five hundred to three thousand dollars, I judge, and lumber to repair his house and build an addition thereto, a hay-scale, fencing, corn-cribs, fencing for stock. For all these things he bought lumber.

Int. 23. State whether or not you loaned said Miller any money prior to the sixteenth of September, 1871; and, if so, state, as near as you can, what amounts.

(Question objected to by complainant's attorney.)

A. I did. I loaned him sums of money, from five hundred dollars to fifteen hundred, for short times. The last loan was in August, 1871, five hundred dollars, without security, without note even, as due-bill or anything.

Int. 24. What business, aside from farming, was said Miller engaged in?

A. Buying and selling stock and shipping stock to market.

Int. 25. State whether you had any knowledge of *of* said Miller keeping his bank account or doing his banking business at any other place than at Monmouth prior to the sixteenth of September, 1871.

A. I did not. Checks on First National Bank at Monmouth
240 were given by Miller to parties living on the east side of Warren County, and sent by the Galesburg banks to the First National Bank at Monmouth, for collection.

Interrogatories propounded to aforesaid witness by counsel for complainant, and the answers of said witness thereto on the cross-examination.

Cross-int. 1. Did you not know that said Miller, prior to September 16th, 1871, was a large trader and shipper of hogs?

A. I knew that he was a shipper of cattle and hogs. I did not know the amount of business exactly.

Cross-int. 2. Did you not know that such was a very precarious business at that period, and did you not have doubts of the continued solvency of those engaged almost exclusively in it?

A. Well, I don't think that stock business was more dangerous than some other kinds of business. There is more or less danger in all sorts of business, as far as loosing money is concerned. I don't know that I had; that is all.

Cross-int. 3. Did you not know that John Miller, prior to that
241 time, was a drinking man, and reputed to be addicted to running after bad women?

(Question objected to by defendant's attorney because immaterial.)

Cross-a. I had heard some rumours to that effect.

Int. 4. Did you not at that time know that almost every man who had followed the business of shipping hogs from the city of Monmouth had broken up at it?

(Question objected to by defendant's attorney.)

A. I did not.

Cross-int. 5. Do you say that at that time you had as much confidence in the continued solvency of a man engaged in that business as though he were engaged in business of a different character?

(Question objected to by defendant's attorney.)

A. It would depend on the business of a different character that you allude to.

Cross-int. 6. Name a business which you regard equally precarious with that at that time.

(Question objected to by defendant's counsel.)

A. Shipping horses and cattle I consider as precarious.

Cross-int. 7. You did regard, then, the buying and shipping of stock as of rather a doubtful kind of business, financially, did you not?

(Question objected to by defendant's attorney.)

242 A. Somewhat so.

Cross-int. 8. Did you not advise the First National Bank, or some of its officers, to quit loaning to John Miller?

(Objected to by defendant's attorney, because the inquiry is not made prior to the 16th of September, 1871.)

A. I don't think I did.

Cross-int. 9. Did you have any talk with them on that subject?

(Objected to, for same reason as last interrogatory by defendant's attorney.)

A. I presume I did as a member of the exchange committee.

Cross-int. 10. Was not your expressed opinion disregarded or overruled with regard to making loans to Miller?

(Objected to for the same reason as the last two interrogatories.)

A. I don't know that it was.

Cross-int. 11. What conversation did you ever have with William Lafferty, or any of the bank officers, about loaning to John S. Miller, about September, 1871?

(Objected to.)

A. I thought we had better get security on his land; I told them so. I am talking now of the president, cashier, and myself of the First National Bank of Monmouth.

Cross-int. 12. What made you think so? State fully.

A. From these rumours of his drinking, and so forth.

243 Cross-int. 13. Why did you think that made any difference?

A. Well, if these rumours would prove true, I thought it would partially disqualify him to do business successfully.

Cross-int. 14. Did you believe the rumours when you advised the taking of the trust-deed?

A. I can't now say whether I did or not at that time.

Cross-int. 15. Had you heard of his paying considerable sums of money in connection with difficulties occasioned by his association with bad women?

A. I had not at that time, September, 1871.

Cross-int. 16. To what do you refer by the expression "and so forth," in your answer to interrogatory number 12?

A. "Drinking, and so forth," refers to drinking and keeping company with bad women.

Cross-int. 17. Did you not think that the bank was not safe unless they got security upon his land, and did you not for that reason advise getting it?

A. I thought it would be safer to get security on his real estate, and advised them accordingly.

Cross-int. 18. Was not that course out of your ordinary way of doing business?

A. We had taken several trust-deeds the same way.

244 Cross-int. 19. Was it not out of your ordinary way of doing business?

A. There was more loans made upon personal security than there was on real estate.

Cross-int. 20. What was your ordinary method?

A. Personal security.

Cross-int. 21. How much did Miller owe the bank at the time you took this trust-deed?

A. I have no recollection exactly what he did owe.

Cross-int. 22. Why did you not take personal security from Miller?

A. Well, at this time, September, when this trust-deed was given, Miller proposed to give real-estate security, temporarily only, as he said he was making arrangements to get $10,000.00 from a party in Galesburg, and then pay off this amount, secured by trust-deed, and give a mortgage to the other party on the same land.

Cross-int. 23. Had you not before this allowed him to overdraw his account considerably?

A. I think the president and cashier had.

Cross-int. 24. Did you not tell them in substance that it was unsafe to let it stand that way, and that the bank ought to get security on his real estate?

A. I don't remember whether I told them it was unsafe or not. I advised them to get security on his real estate.

245 Cross-int. 25. Did you not think it unsafe?

A. Well, it was contrary to the rules laid down to the national banks from the Department; all overdrafts were contrary to rules.

Cross int. 26. When you learned of this overdraft, allowed by the presi-

dent and cashier, spoken of, did you not regard it as unsafe, considering the rumors about Miller you have referred to?

(Objected to by defendants' attorney, because a mere repetition of what has been already asked of the witness.)

A. I haven't referred to any particular overdraft. I don't know now that there was any overdraft at the time the deed of trust was given.

Cross-int. 27. Did you not take that trust-deed to secure the payment of money that Miller owed the bank?

A. My recollection is it was money he owed the bank at that time, and it was money the bank advanced at that time; additional money.

Cross-int. 28. Whether the amount he owed the bank at that time was overdrafts or for money owed in some other way, did you not think the bank unsafe unless they got something to make it secure?

A. Yes.

246 Cross-int. 29. Did you not so tell the president and cashier?

A. I probably did.

Cross-int. 30. Was it not in consequence of your talk with them that this trust-deed was taken as such security?

A. I can't say that it was my talk.

Cross-int. 31. It was after it, was it not?

A. I think the same time; the same day.

Cross-int. 32. You, and the president, and the cashier agreed about the expediency of it, didn't you?

A. I presume we did.

Cross-int. 33. When you got the trust-deed executed and placed on record, did you regard it as sufficient security?

(Objected to by defendants' atr.)

A. I regarded it as good security.

Cross-int. 34. Did you know any reason for John S. Miller needing to borrow such a sum as ten thousand dollars?

A. I only know of what he told me.

Cross-int. 35. Did you think a man in his situation, with his habits, in a good financial situation while carrying or proposing to carry a load of ten thousand dollars?

(Objected to by defendants' attorney.)

A. He said—talked with me that day—that he only owed the bank about $4,000.00 and myself $1,000.00.

(Answer objected to by complainant's counsel, as not responsive and hearsay.)

Cross-int. 36. When you loaned him the five hundred dollars

247 you spoke of, it was a mere accommodation, to be repaid without interest the first time you saw him, was it not?

A. I think he paid me a little interest usually. I don't remember that he paid me the next time he saw me. It was to be paid as soon as he got return from a shipment of stock, to the best of my recollection.

Cross-int. 37. You never loaned him anything in that manner after the 1st of September, 1871, did you?

A. No; I think not.

Cross-int. 38. The larger sums you speak of having previously loaned him you had security for, did you not?

A. I did not, with the exception of a thousand dollars loaned for a year.

Cross-int. 39. When you loaned him the sums for a short time, which you speak of having done, previous to September, 1871, were they to be repaid in a very few days, as soon as he got returns from shipments of stock?

A. Yes, to my recollection.

Interrogatories propounded to aforesaid witness by counsel for defendants, an' answers thereunto, on redirect examination.

Redirect int. 1. State whether or not Miller applied to you personally to borrow money after the 1st of September, 1871.

(Objected to by complainant's counsel.)

A. I don't think he did.

248 Redirect int. 2. You say, in answer to cross-interrogatory number 35, that Miller was talking to you about borrowing $10,000.00 from some party in Galesburg; that he only owed the First National Bank of Monmouth about $4,000.00 and you $1,000.00. Now state what, if anything, he said in that conversation he was going to do with the balance of the money after paying you in the bank.

(Question objected to by complainant's counsel because it asks for hearsay.)

A. He wanted to buy young stock for his farm and make some improvements on his farm.

W. B. JENKS.

(Endorsed:) Filed July 20th, 1875. W'm H. Bradley, cl'k.

249

1868.				1868.			
June 11	To paid checks		635 42	June 3	By deposits		1,135 44
July 10	" " "		500 02	Aug. 12	" "		1,500
Aug. 10	" " "		1,500 02	Oct. 19	" "		473 65
Oct. 21	" " "		473 65	Dec. 10	" "		1,070 22
Dec. 11	" " "		1,070 22	" 16	" "		976 35
				1869.			
" 19	" " "		976 33	Feb'y 9	" "		1,521 20
1869.							
Feb'y 8	" " "		1,060 88	March 9	" "		1,048 70
" 9	" " "		2,220 96	" 15	" "		3,029
" 11	" " "		700 02		By balance		66 77
" 12	" " "		900 02				
" 16	" " "		500 02		Ch's returned March 16, 1869.		
" 17	" " "		40 30				
March 15	" " "		156 70				
" 16	" " "		66 77				
			10,821 33				10,821 33
March 16	To balance		66 77	March 19	By deposite		66 77
" 20	To paid checks		634 42	" 25	" "		560 10
" 23			500 02	" 26	" "		1,440 13
" 26			865 79	April 5	" "		463 40
April 5			50 02	May 3	" "		2,358 58
" 7			100 02	" 10	" "		8,551 66
" 10			313 36	" 18	" "		5,000
" 29			1,748 14	" 29	" "		2,822 32
May 1			470 02	July 1	" "		1,159 42
" 3			140 42	" 17	" "		774 52
" 6			500 04	" 19	" "		1,000
" 10			1,001 42				
" 11			6,019 06				
" 12			1,000 02				
" 18			3,701				
" 22			1,226 90				
" 26			238 05				
" 27			500 02				
" 29			279 42				
June 13			326 51				
" 19			1,000 02				
June 22			398 52				
250 July 3	To paid checks		1,933 94				
" 19	" " "		75 02				
July 20	" " "		65 02				
" 26	" " "		1,839 26				
	Am't forward		25,183 20		Am't fo'w'rd		24,203 90
July 28	To paid checks		57 62	Aug. 4	By deposite		2,467 01
" 31	" " "		1,000 02	" 7	" "		7,789 86
Aug. 4	" " "		268 62	" 16	" "		1,407 38
" 5	" " "		4,281 44	Sept. 4	" "		2,384 77
" 6	" " "		415 22	" 11	" "		2,000
" 7	" " "		1,934 69	" 20	" "		832 01
" 12	" " "		1,255 21	Oct. 1	" "		1,518 40
" 16	" " "		300 02	" 14	" "		840 19

		1869.						1869.			
	Aug.	20	To paid checks			100	00	Oct. 19	By D. Wallace, c'h		
	"	21	" " "			452	97	" 20	" deposites		
	"	26	" " "			600	00	" 22	" "		
	Sept.	6	" " "			150	00	" "	" "		
	"	9	" " "			420	44	" 29	" "		
	"	15	" " "			497	27	Nov. 1	" "		
	"	16	" " "		1,	000	04	" 2	" "		
	"	20	" " "		1,	000		" 4	" "		
	"	21	" " "			450	00	" 5	" "		
	"	24	" " "		1,	500	37	" 6	" "		
	"	28	" " "		1,	151	53	" 12	" "		
	Oct.	2	" " "			936	44	" 15	" "		
	"	7	" " "			900	10	" 15	" "		
	"	8	" " "			150	00	" 16	" "		
	"	15	" " "			121	74	" 19	" "		
	"	19	" " "			695	15	" 22	" "		
	"	20	" " "			500	00	" 23	" "		
	"	21	" " "		1,	695	26	" 23	" "		
	"	22	" " "			200	00	" 27	" "		
	"	23	" " "			963	28	Dec. 3	" "		
	"	25	" " "		1,	315	10	" 10	" "		
	"	26	" " "		3,	000	13	" 18	" Chi. draft		
	"	27	" " "			730	01				
	"	28	" " "			572	20				
		Oct. 29	" " "		3,	180	07				
251	Oct.	30	To paid checks			186	06				
		Nov. 1	" " "		1,	720	66				
	Nov.	2	" " "		1,	557	60				
	"	3	" " "			100	02				
	"	5	" " "			700	04				
	"	6	" " "			412	69				
	"	8	" " "		2,	501	25				
			Am't forw'rd		64,	019	31		Am't forward		
	Nov.	9	To paid checks			731		Dec. 28	By deposits		
	"	11	" " "			785	56	" 31	" "		
								1870.			
	"	12	" " "		1,	194		January 8	" "		
	"	13	" " "			200	04	" 11	" "		
	"	15	" " "		2,	883	77				
	"	16	" " "		2,	566	42				
	"	17	" " "			906	50				
	"	19	" " "			672	30				
	"	20	" " "			594	46				
	"	23	" " "		3,	000	63				
	"	23	" " "		1,	761	90				
	"	26	" " "		1,	147	38				
	"	27	" " "		1,	200	02				
	"	29	" " "			83	22				
	"	30	" " "			610	04				
	Dec.	1	" " "			98	54				
	"	2	" " "			500	00				
	"	3	" " "			200	00				
	"	4	" " "			16	52				
	"	6	" " "			301	36				
	"	7	" " "			194	04				
	"	9	" " "		2,	012	29				
	"	10	" " "			433	72				
	"	13	" " "		2,	000	96				
	"	14	" " "		1,	200	51				
	"	17	" " "			300	00				
	"	18	" " "			100	00				
	"	20	" " "			304	01				
	"	21	" " "		3,	567	79				
		Dec. 24	" " "			18	04		To am't fo'w'rd		
252	Dec.	27	To paid checks			165	04				
	"	30	" " "			751	71				
	Dec.	31	" " "			26	37				
		1870.									
	Jan'y	3	" " "			99	58				
	"	4	" " "		1,	200					
	"	5	" " "			116	02				
	"	6	" " "			44	89				
	"	8	" " "			142	69				
	"	10	" " "		2,	944	16				
	"	11	" " "			16	99				
	"	12	" " "			22	00				
	"	"	" " "			318	81				
			Am't fo'w'rd		89,	980	75		Am't fo'ward		
		1870.						1870.			
			To am't forw'rd		89,	980	75		By am't forw'rd		
	Jan.	15	To paid checks			133	35	Jan. 22	By deposits		
	"	17	" " "		1,	015	04	" "	" "		

1870.							1870.				
Jan.	18	To paid checks			100	02	Jan.	24	By deposite		102 95
"	19	" " "			60	85	"	29	" "		1,040 78
"	20	" " "			965	44	"	31	" "		2,654 25
"	21	" " "			497	59	Feb'y	1	" "		1,179 56
"	24	" " "			859	23	"	2	" "		1,519 74
"	25	" " "			2,168	61	"	3	" "		244 20
"	26	" " "			521	06	"	7	" "		24 54
"	27	" " "			2,016	56	"	9	" "		300
"	28	" " "			598	02	"	15	" "		1,083 30
"	29	" " "			390	56	"	18	" "		2,569 39
"	31	" " "			1,650	02	"	"	" "		2,393 72
Feb'y	1	" " "			27	34	"	19	" "		150
"	2	" " "			65	02	"	21	" "		1,090 78
"	3	" " "			1,201	64	"	22	" "		210 77
"	4	" " "			10	02	"	"	" "		850
"	5	" " "			109	77	"	24	" "		18 14
"	8	" " "			80	02	"	"	" "		57 80
"	9	" " "			300	02	"	"	" "		556 55
"	11	" " "			1,012	29	"	26	" "		1,441 88
"	19	" " "			567	84	M'ch	2	" "		1,933 09
	Feb'y 15	" " "			436	46	"	4	" "		1,007 04
253	Feb'y 16	To paid checks			3,467	94	March	8	By deposite		1,283 76
	" 17	" " "			587	33	May	5	" "		2,590 61
Feb'y	18	" " "			700	02					
"	19	" " "			441	62					
"	21	" " "			1,336	39					
"	22	" " "			1,146	06					
"	23	" " "			2,653	69					
"	24	" " "			444	73					
"	25	" " "			437	94					
"	26	" " "			1,069	43					
March	2	" " "			13	57					
"	3	" " "			587	19					
May	5	" " "			2,590	61					
Oct.	8	" " "			9						
					130,216	25			363 vouchers returned January 23th, 1871.		130,216 25
1871.							1871.				
Jan.	14	To paid checks			3,564	09	Jan.	21	By deposite		3,283 31
Jan.	18	" " "			3,884	24	"	23	" "		3,894 65
"	19	" " "			368	46	"	24	" "		4,122 65
"	20	" " "			4,311	27	"	25	" "		967 38
"	21	" " "			1,194	19	"	26	" "		4,253 71
"	23	" " "			124	39	"	"	" "		3,330 41
"	24	" " "			5,840	92	Feb.	7	" "		4,951
"	25	" " "			1,394	45	"	8	" "		610 71
"	26	" " "			1,140	49	"	10	" "		1,170 47
"	28	" " "			2,205	97	"	"	" "		894 40
"	30	" " "			2,217	81	"	11	" "		1,288 80
"	31	" " "			1,472	44	"	13	" "		1,126 56
"	31	" " "			818	36	"	27	" "		3,225 08
Feb'y	3	" " "			156	89	"	28	" "		1,760 05
"	4	" " "			20	82	March	2	" "		1,800
"	6	" " "			1,138	54	"	"	" "		190
"	7	" " "			1,958	28	"	25	" "		831 58
"	9	" " "			1,100	02	"	"	" "		880 14
"	10	" " "			125	22	April	1	" "		1,942 80
"	13	" " "			44	35	"	6	" "		735
	Feb'y 14	" " "			700	02	"	11	" "		170 26
254	Feb'y 15	To paid checks			140	02	April	17	By deposite		41 10
	" 16	" " "			1,729	39	"	"	" "		798 75
Feb'y	18	" " "			50		"	20	" "		175
"	23	" " "			450	86					
"	27	" " "			93	94					
"	28	" " "			500	02					
March	4	" " "			143	76					
"	22	" " "			1,200	02					
"	23	" " "			581	77					
"	25	" " "			1,800						
April	1	" " "			101	02					
"	4	" " "			900	02					
"	8	" " "			25	02					
"	19	" " "			467	20					
"	18	" " "			575	95					
"	19	" " "			40	30					
"	22	" " "			565	05					
		Carried forward ...			43,075	46			Carried fo'w'rd		42,441 81
1871.							1871.				
		Am't bro't fo'w'rd.			43,075	46			Am't bro't fo'w'rd.		42,441 81
April	25	To paid checks			1,300	02	April	28	By deposit		1,451 72
"	28	" " "			4,070	04	"	"	" "		3,690 90
May	2	" " "			3,460	49	May	5	" "		4,719 68

	1871.					1871.			
May	3	To paid checks			1,607 36	May	9	By deposits	72 70
"	30	"	"	"	302 79	"	19	" "	510
June	9	"	"	"	100 00	"	23	" "	300
"	10	"	"	"	500 00	June	1	" "	250 00
"	12	"	"	"	2,357 19	"	14	" "	3,621 40
"	13	"	"	"	136 84	"	16	" "	204 74
"	14	"	"	"	53 72	"	19	" "	621 19
"	15	"	"	"	39 02	"	26	" "	1,000 15
"	16	"	"	"	600 00				211 14
"	17	"	"	"	202 92				
"	19	"	"	"	63 82				
"	21	"	"	"	37 82				
"	23	"	"	"	51 62				
"	24	"	"	"	300 81				
"	26	"	"	"	556 51				
"	29	"	"	"	200 02				
July	1	"	"	"	199 21				
					50,305 72				50,305 72

255	1871.					1871.			
		Balance bro't down			211 14	July	8	By deposit	204 13
July	6	To paid checks			100 00	"	12	" "	475 19
"	8	"	"	"	600 02	"	19	" "	600 00
"	11	"	"	"	100 00	"	21	" "	604 62
"	12	"	"	"	500 00	"	25	" "	92 00
"	18	"	"	"	173 06	"	26	" "	289 72
"	20	"	"	"	100 02	"	27	" "	1,375 91
"	21	"	"	"	457 02	Aug.	1		1,042 35
"	22	"	"	"	110 24	"	4		1,016 00
"	24	"	"	"	1,631 02	"	10		1,004 17
"	25	"	"	"	2,272 16	"	11		456 78
"	27	"	"	"	255 04	"	12		1,102 04
"	28	"	"	"	294 06	"	16		1,422 22
"	31	"	"	"	2,085 04	"	17		542 17
"	"	"	"	"	9 02	"	21		600 25
Aug.	3	"	"	"	332 02	"	23		204 24
"	4	"	"	"	505 65	"	24		2,228 40
"	5	"	"	"	28 02	"	25		175
"	7	"	"	"	1,000 02	"	30		100
		Am't forward			10,765 63			Am't for'w'rd	14,789 80

256	1871.					1871.			
		Am't bro't up			10,765 63	Sept.	1	Am't bro't up	14,789 80
Aug.	10	To paid checks			500 02	"		By deposit	250 29
"	11	"	"	"	1,000 02	"	7	" "	1,033 22
"	12	"	"	"	55 35	"	9	" "	400
"	13	"	"	"	630 04	"	12	" "	4,215 25
"	15	"	"	"	503 44	"	"	" "	47 75
"	18	"	"	"	400 02	"	25	" "	630 16
"	19	"	"	"	726 04	Oct.	4	" "	697 67
"	21	"	"	"	422 32	"	20	" "	1,751 24
"	22	"	"	"	467 10	"	30	" "	2,035 55
"	25	"	"	"	148 02	Nov.	1	" "	250 02
"	26	"	"	"	15 02	"	10	" "	250 02
"	29	"	"	"	627 04				
"	30	"	"	"	1,000 02				
"	31	"	"	"	300 96				
Sept.	6	"	"	"	12 12				
"	9	"	"	"	12 02				
"	18	"	"	"	4,300 02				
"	20	"	"	"	775 02				
"	27	"	"	"	100 02				
Oct.	2	"	"	"	700 02				
"	11	"	"	"	25 02				
"	18	"	"	"	1,000 02				
"	20	"	"	"	170 02				
"	21	"	"	"	476 02				
"	25	"	"	"	1,500				
"	27	"	"	"	1,355 20				
"	28	"	"	"	565 13				
Nov.	11	"	"	"	226 83				
					29,796 35				29,796 35

Returned 169 vouchers July 3rd, 1871.

Returned 78 vouchers Nov. 23, 1871.

257 *Appeal-bond.*

And afterwards, to wit, on the 30th day of July, A. D. 1875, said complainant filed in said clerk's office his bond in appeal; which said bond is in the words and figures following, to wit:

Supreme Court of the United States.

CHARES E. GRANT, ASSIGNEE IN BANKRUPTCY of John S. Miller, bankrupt,
vs.
THE FIRST NATIONAL BANK OF MONMOUTH, Illinois, John J. Glenn, B. T. O. Hubbard, and John S. Miller.

Know all men by these presents that we, Francis Fuller and Francis Colton, of Galesburg, Illinois, are held and firmly bound unto the First National Bank of Monmouth, Illinois, John J. Glenn, John S. Miller, & B. T. O. Hubbard, in the sum of five hundred dollars, to be paid to the said The First National Bank of Monmouth, Illinois, John J. Glenn, B. T. O. Hubbard, and John S. Miller, their executors and administrators; to which payment, well and truly to be made, we bind ourselves and each of us jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals, dated this 29th day of July, A. D. 1875.

258 Whereas the above-named Charles E. Grant, assignee in bankruptcy of John S. Miller, bankrupt, hath prosecuted a writ of error to the Supreme Court of the United States to reverse the decree rendered in the above-entitled action by the circuit court of the United States for the northern district of Illinois:

Now, therefore, the condition of this obligation is such that if the above-named Charles E. Grant, assignee in bankruptcy of John S. Miller, bankrupt, shall prosecute his said writ of error to effect, and answer all costs and damages if he shall fail to make good his plea, then this obligation shall be void; otherwise to remain in full force and virtue.

FRANCIS FULLER. [SEAL.]
FRAN'S COLTON. [SEAL.]

Approved.

H. W. BLODGETT.
Judge.

The above bond is satisfactory, reserving, however, the right to move for a bond in a larger amount if we shall deem it necessary after ascertaining what disposition has been made of the money derived from the sale.

Chicago, Ill's, July 30, 1875.

LAWRENCE, CAMPBELL & LAWRENCE.

(Endorsed:) Filed July 30, '75. W'm H. Bradley, cl'k.

259 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for said district, do hereby certify the above and foregoing to be a true, correct, and complete transcript of the record of all the proceedings had in said court in the cause wherein Charles E. Grant, assignee of the estate and effects of John S. Miller, a bankrupt, is the complain-

ant, and First National Bank of Monmouth et al. are the defendants, as the same appears from the files and records of said court now remaining in my custody and control.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office in Chicago, in said district, this 11th day of October, A. D. 1875, and of our Independence the 100th year.

[SEAL.] WM H. BRADLEY,
Clerk.

260 UNITED STATES OF AMERICA:

In the Supreme Court of the United States, October term, A. D. 1875.

CHARLES E. GRANT, ASSIGNEE OF THE ESTATE and effects of John S. Miller, a bankrupt, appellant,
vs.
THE FIRST NATIONAL BANK OF MONMOUTH, B. T. O. Hubbard, John J. Glenn, and John S. Miller, appellees.

And now comes the said appellant, Charles E. Grant, assignee as aforesaid, by Thomas G. Frost, his attorney, and says that in the record and proceedings aforesaid there is manifest error in this: that the said circuit court erred in finding the equities in said case to be with the defendants, and said circuit court erred in dismissing the bill of complaint of the complainant.

T. G. FROST,
Attorney for Appellant.

(Indorsement on cover:) No. 242. Charles E. Grant, assignee of John S. Miller, a bankrupt, appellant, vs. The 1st National Bank of Monmouth, Illinois, Jno. J. Glenn, B. T. O. Hubbard, and John S. Miller. N. Illinois, C. C. U. S. Filed 16th October, 1875.

REC. 242—7

IN THE

Supreme Court of the United States,

OCTOBER TERM, A. D. 1877.

No. 242.

CHARLES E. GRANT, Assignee of JOHN S. MILLER, a Bankrupt, Appellant,

—vs.—

THE FIRST NATIONAL BANK OF MONMOUTH, ILLINOIS, JOHN J. GLENN, B. T. O. HUBBARD and JOHN S. MILLER, Appellees.

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

Brief and Argument on Behalf of Appellant.

MILLER & FROST,

Att'ys for Appellant.

CHICAGO:
Beach, Barnard & Co., Legal Printers, 104 Randolph Street.

1877.

IN THE

Supreme Court of the United States,

OCTOBER TERM, A. D. 1877.

No. 242.

CHARLES E. GRANT, Assignee of JOHN S. MILLER, a Bankrupt, Appellant,

—vs.—

THE FIRST NATIONAL BANK OF MONMOUTH, ILLINOIS, JOHN J. GLENN, B. T. O. HUBBARD and JOHN S. MILLER, Appellees.

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

Brief and Argument on Behalf of Appellant.

I.

STATEMENT OF THE CASE.

This was an appeal from a decree of the Circuit Court of the United States for the Northern District of Illinois, rendered on the 27th day of July, A. D. 1875. A bill was filed by the appellant as assignee in bankruptcy of John S. Miller, against the appellees on the 3d day of July, A. D. 1872, to set aside a certain trust deed executed by said John S. Miller to John J. Glenn, trustee, for the benefit of the First National Bank of Monmouth, and made

within four months of the filing of the petition in bankruptcy against said Miller, and on the 15th day of September, A. D. 1871, to secure a promissory note for $6,500, given for an indebtedness due to said bank from said John S. Miller, and payable to B. T. O. Hubbard, as cashier of said bank, upon $328\frac{32}{100}$ acres of land belonging to said Miller, and lying in Sections 24 and 25, in Township 12, North of the base line, and Range 2, West of the 4th Principal Meridian, Warren County, Illinois, on the ground that said trust deed was executed by said Miller, and accepted by said First National Bank, with the fraudulent intent thereby to give a preference to one of the creditors of said Miller, and with the intent to defraud and delay the operation of the bankrupt act, and in violation of its provisions, said Miller being at the time insolvent, and said bank having reasonable cause to believe said Miller was insolvent at that time, and that a fraud on said act by the giving of said deed was intended.

The bill charged that said trust deed was made with intent between the parties thereto to defraud the creditors of said Miller, as well as to evade the provisions of the bankrupt act. The appellees, the First National Bank of Monmouth, B. T. O. Hubbard, and John J. Glenn, filed an answer admitting the execution of said trust deed, and the fact alleged in the bill that said John S. Miller was on the 22d of January, A. D. 1872, adjudged a bankrupt by the District Court of the United States for the Northern District of Illinois, but denying all intent to violate the provisions of the bankrupt law, or to obtain a fraudulent preference over the other creditors of said Miller, and denying all the allegations of fraud in said bill, and all knowledge or belief, or reason for belief, that said Miller was insolvent at the time of the execution of said deed. A general replication was filed to the answer, and on the 21st day of July, A. D. 1875, said cause came on for hearing before Hon. Henry W. Blodgett, and after hearing the testimony

and arguments of counsel for the respective parties, and on the 27th day of July, A. D. 1875, the Court rendered a decree finding the equities of the case with the defendants, and dismissed the bill. From that decree the complainant below appeals to this Co[illegible]

Upon the trial of the case, it was admitted by the counsel for the respective parties, that the petition in bankruptcy against John S. Miller was filed December 19, 1871, by John H. Davidson, and the Farmers' & Mechanics' Bank of Galesburg, and that pursuant to the prayer of said petition, and on the 22d of January, 1872, said John S. Miller was adjudged a bankrupt, and Charles E. Grant, the appellant, was appointed his assignee, and the property and effects of the bankrupt were duly assigned to said Grant. The other evidence in the case relates chiefly to the question of fraud, and the question of the intent of the parties by the execution of this trust deed, to secure a fraudulent preference over the other creditors of John S. Miller. The fact of the insolvency of Miller at the time of the execution of the trust deed, was established by the evidence on the part of the appellant, and was not contradicted seriously by the appellees. The evidence disclosed the fact that for a long time prior to giving the security sought to be set aside, Miller, who executed it, had failed to pay, and was unable to pay his debts at maturity, and that this state of facts was, to a considerable extent, known to the officers of the bank, and the means of obtaining full information on the subject was within their reach.

ERRORS ASSIGNED.

The trust deed in question was clearly a violation of the provisions of the bankrupt act, and should have been so adjudged by the court, and the court erred in its decree in finding the equities with the defendants, and in dismissing the bill.

LAW.

The execution of a conveyance by an insolvent debtor of his property, to secure to the creditor a precedent debt, the debtor being a trader, and knowing of his insolvency, or that he cannot pay his debts as they mature, is a fraud upon the other creditors, under the bankrupt act, so far as the debtor is concerned, as he must be supposed to have intended the natural consequences of his own act, viz: to secure a preference or advantage to one creditor over his other creditors.

Forbes v. *Howe*, 102 Mass., 437.

And when the creditor who accepts such a conveyance has reason to believe that such debtor is at the time unable to pay his debts as they mature, then the security is void under the act, and gives no title to the party receiving it.

ARGUMENT.

There is really but one question in this case; that is, was the trust deed to John J. Glenn for the benefit of the First National Bank of Monmouth, the appellee, a fraudulent preference in violation of the bankrupt act, so that, under the provisions of the act, the title to the security or property conveyed passed to the assignee for the benefit of the creditors generally?

The original act under which this transfer, made September 16, 1871, was executed, provided "that if any person being insolvent, or in contemplation of insolvency, "within four months before the filing of the petition by or "against him, with a view to give a preference to any creditor or person having a claim against him, or who is "under any liability for him, procures any part of his "property to be attached," &c., or "makes any payment,

" pledge, assignment, transfer, or conveyance of any part " of his property, either directly or indirectly, absolutely " or conditionally, the person receiving any such payment, " pledge, assignment, transfer, or conveyance, or to be " benefited thereby or by such attachment, having rea- " sonable cause to believe such person is insolvent, and " that such attachment, payment, pledge, assignment or " conveyance is made in fraud of the provisions of the act, " the same shall be void, and the assignee may recover " the property or the value of it from the person so re- " ceiving it, or so to be benefited."

In *Dutcher* v. *Wenzell*, 4 Otto, 557, it is said by this Court:

" Insolvency, in the sense of the bankrupt act, means " that the party whose business affairs are in question, is " *unable to pay his debts as they become due* in the ordinary " course of his daily transactions, and a creditor may be " said to have reasonable cause to believe his debtor to " be insolvent when such a state of facts is brought to his " notice respecting the affairs and pecuniary condition of " his debtor, as would lead a prudent man to the conclu- " sion that the debtor is unable to *meet his obligations as* " *they mature* in the ordinary course of his business."

Buchanan v. *Smith*, 16 Wall., 308.

Toof, et al. v. *Martin, Assignee, etc.*, 13 Ib., 40.

" Reasonable cause for such a belief cannot arise unless " the fact of insolvency actually existed, but if it appear " that the debtor giving the preference was actually insol- " vent, and that the means of knowledge were at hand, and " that such facts and circumstances were known to the " creditor receiving the preference as clearly *ought to have* " *put a prudent man upon inquiry; it must be held that he* " *had reasonable cause to believe that the debtor was insolvent*, " if it appears that he might have ascertained the fact to " be so by reasonable inquiry."

Wilson v. *City Bank*, 17 Wall, 487.

The question here presented is,-did the First National Bank of Monmouth, the appellee in this case, have reason to believe that Miller was insolvent when he gave the trust deed, or were such facts and circumstances known to the bank, or its officers as ought to have put them as prudent men, upon inquiry, if by inquiry they might have ascertained the fact of the insolvency of Miller, or the fact that he could not pay his debts as they matured, even if ultimate payment were possible? Miller was, in the sense of the Bankrupt Law, a trader, and was engaged in the business of buying, selling, and shipping stock, and in the character of a trader his conduct is to be scrutinized, and his true position under the law determined.

I.

In the first place Miller was hopelessly insolvent, in both the legal and popular sense of the term, when the trust deed was given. He owed $24,000, and owned property to the amount of about $17,000; he was in debt some $7,000 over and above the entire amount of his property, (pages 24 and 25 of printed record, interrogatories 35 and 36, p. 25, and int. 21, page 25) and he swears that "at the "time he executed the trust deed he thought he was in "debt fully as much as he was worth. He ought to have known he was in debt at least $5,000, over and above all his property.

II.

What means of knowledge or information had the First National Bank? We insist it had abundant means of information. Were the bank and its officers chargeable with notice of Miller's condition, or of facts and circumstances sufficient to put them upon inquiry which would have led to the disclosure to the bank of his real condition,

or of the fact that he could not pay his debts as they matured? We answer, yes. In the first place, Miller lived in the same county, and his farm was situated in the same county as that in which the president and cashier of the bank resided, and only seven miles from Monmouth, where the bank was located. Miller's business was conducted chiefly through the First National Bank and the Monmouth National Bank; and the city of Monmouth and the city of Galesburg only 17 miles distant, were the places where nearly all his business was done, and his debts were contracted; and Hubbard, the cashier of the First National Bank, was, according to his own testimony, informed by Miller at the time of the giving of the trust deed in question, that he expected to borrow $10,000 in Galesburg to pay off his debts. Lafferty, the president of the First National Bank, was sufficiently acquainted with Miller to obtain a description of all his real estate, which constituted the bulk of his property, in order to insert the same in the trust deed to be given to secure the debt due the bank, without definite information given by Miller. (Page 25 printed record, int. 43, and page 56, int. 18.)

$22,600 of the $24,000 indebtedness was due in Monmouth and Galesburg; and $13,000 in Monmouth alone, (pages 34 and 35), and Lafferty, the president of the bank, had been acquainted with Miller for 15 or 16 years, and Hubbard, the cashier, had known him ten or twelve years, and he had done business at the First National Bank, more or less, in 1868, 1869, 1870, and 1871, (page 49 of record.) The bank was in as favorable circumstances to ascertain the facts as a bank could well be. So much for the general situation.

Let us look then a little more particularly into the details of his business transactions. Miller's business was that of buying, selling and shipping stock. Miller swears, that while carrying on his business, he borrowed money from the First National Bank, and from the Monmouth National

Bank, and from three banks in Galesburg, and that he was borrowing money all the time he was shipping stock; that he commenced borrowing from the Monmouth National Bank in November, A. D. 1870, and continued until January 1, 1871.

He borrowed from that bank during the three months that he continued his business there, some $40,000, when he went over to the First National Bank of Monmouth. During the period of his accounts with these banks which, with the exception of three and a half months, were kept at the First National Bank of Monmouth, he borrowed from time to time of that bank, sums amounting to about $200,000. (Page 21 printed record.) He discontinued business with Monmouth National Bank in January, 1871, because they refused to pay his checks, and required him to give mortgage security for what he owed them. Frank W. Harding, cashier of Monmouth National Bank, swears that the officers of the bank told Miller not to check on them, for they should not pay his checks, but nevertheless he did check on them, and these checks were taken from the *First National Bank*, and were presented by one of *the officers of that Bank* to the Monmouth National Bank for payment, and payment was refused, (page 43 printed record.) The First National Bank advanced the money to pay his indebtedness to the Monmouth National, and he subsequently did his business with the First National Bank. This was in January, 1871. His account at the Monmouth National Bank had been overdrawn during nearly the entire time he did business with that bank, (page 44 record.)

The amount of Miller's over-drafts on the Monmouth National Bank on the 10th of January, 1871, was $9,183.84, though they were afterwards paid. This bank refused to pay these checks before mentioned, because Miller had neither money in the bank out of which the checks could

be paid, nor securities with which to protect the bank in making payment.

Now then for the direct experience of the First National Bank itself with Miller, and its actual knowledge derived from its account and business relations with Miller. This bank renewed its relations with Miller, as already stated, January 14, 1871, and advanced $4,000 to pay a balance due from Miller to the other bank, taking Miller's note with one Wallace, as security.

Miller did not pay this note at maturity, but it was renewed for him *three* times—and, in fact, he *never* paid it—but it constituted part of the trust deed security; the note for $4,000, and the overdraft to the sum of $2,200, and the $300 cash, making the $6,500 included in the trust deed. He not only never paid this $4,000 note, but also overdrew his account $2,200. When called on to pay the amount of the overdrafts, he failed to do it, and, after about a month, he secured it by this trust deed, together with the original debt of $4,000, incurred on the 14th of July, 1871. He comes from the Monmouth National Bank with a debt of $4,000—his checks thrown out, his credit dishonored—and makes a loan of the First National Bank, in order to meet this debt due to the other bank. The note falls due, is not paid, but is renewed three times, and is carried by the First National Bank from January 14th to September 16th—eight months—and still remaining unpaid, is finally secured with an additional indebtedness of $2,200, for overdrafts incurred during this same period the note was running, by this trust deed.

These circumstances certainly ought to have put prudent men upon inquiry. Here was not only evidence that he had not paid, but a just inference from his conduct was he could not pay, else he would have at least paid his overdrafts, and his only way out was to *postpone because he could not pay*, and that was the reason the security was

taken instead of the cash. It is perfectly manifest that this was the fact.

What other facts were there to notify the First National Bank of the insolvency of Miller? There was the fact that he reported, before or at the time of the giving of the trust deed, that he was going to get $10.000 at Galesburg, and *that* "*would set him afloat.*" This appears, in substance, from the testimony of Lafferty, the President, and Hubbard, the Cashier. (Pages 51 and 64 of printed record.) Miller's explanation of his plans at this time is, (page 35 of printed record, Cross-Int. No. 3,) that he thought if he could give a mortgage on his two South 80 acre tracts to the First National Bank, and could then mortgage the whole of his place for about $10,000—that *he then thought he could get along*. In short, there was an indebtedness to be provided for of at least $16,500, and which it would take about all his property, (estimated at $17,000,) to pay, and the bank officers knew the property that he owned, and that it was nearly all embraced in the trust deed. William J. T. Wallace, who was Miller's security to the First National Bank, swears that in June, 1871, Miller's indebtedness was some $21,000, (p. 40 of printed record,) and that in June and September, prior to the execution of the trust deed, he had several conversations with Lafferty, President of the First National Bank, in which he communicated to Lafferty the fact of Miller's embarrassed condition, telling Lafferty: "Miller would be obliged to "mortgage his land. He asked Lafferty if that was not "the best thing Miller could do, and he said it was.". (P. 40.) About the 10th of September he had another conversation with Lafferty, and "went to see if he could se- "cure $10,000 on Miller's farm."

In the conversation, he told Lafferty he "was getting "shaky of Miller." In September, he also saw Hubbard, the cashier, and "told Hubbard that he had lost a good deal "of money, and intended to mortgage his land, *and that*

" *John Miller had got to where he would have to do the same.* " Hubbard said it was the best thing they could both do," and just prior to the execution of the trust deed, Hubbard called Wallace into the bank, " and requested him to see " Miller, and try to get him to give them a mortgage for " what he owed them. He told Hubbard he did not be- " lieve Miller would do it." Hubbard, in reply, " said " Miller had to do something; that he had run *behind* " *about* $2,300." Further conversation was had, and the inducement offered by Hubbard that he would see if $10,000 could not be raised for Miller on long time. Hubbard communicated with Miller. " Miller *said that he was* " *hard up;* and wanted some more money ;" that " if he " would see Hubbard, and he would let him have some " $300, and keep the mortgage a secret, that he would do " it." Wallace " told *Hubbard what John* [Miller] *said,*" (page 41 of Record.) Upon this understanding, the sequel shows that the mortgage was afterwards executed, and remained off from record after its execution for some ten days, being executed on the 16th, and filed for record on the 26th of September.

Now, if all this occurred, or anything like it, there can be no question that the bank had full notice of Miller's condition, and that he was then unable to pay his debts at maturity. What answer is given to this evidence touching these interviews between Lafferty, the President, and Hubbard, the Cashier, on one side, and Miller on the other? Lafferty says : " If there was any such conversation with " Wallace, I have not been able to call it to mind. I have " thought the matter over, and cannot recollect such con- " versations, *but would not be positive there was none.*" He does recollect, however, that when they were talking of giving this mortgage, or trust deed, Miller said " he was " negotiating with some parties in Galesburg for a loan of " $10,000, which would clear up his indebtedness, or fix up " all his matters," but " he says the conversation he cannot

" call to mind." He gives only the general purport, or conclusion, but he gives enough to show that he well understood he was negotiating with a man who was laboring under pecuniary embarrassment, and was struggling to obtain money to pay his debts, and, at this very time, the President and Cashier of the bank were trying to induce Miller to fix up or secure his overdrafts, which had been lying unprovided for for nearly a month, and which then *he could not pay* any more than his $4,000 note, which he had had renewed three times, and all he could do was to give security upon his land. When witnesses, equally credible, testify, the one particularly to a conversation, and the other denies it only by saying that he don't recollect it, but is not positive that it did not occur, the preponderance of proof is in favor of the fact of the conversation having occurred, in accordance with the statement of the witness who swears particularly to the fact, especially when the conversation is in entire keeping with the other conceded facts and circumstances of the case, and Wallace's testimony should therefore prevail over that of Lafferty as to his conversation with Lafferty.

Hubbard, the cashier, is more positive in his denial of Wallace's statements, as to the alleged conversations with Hubbard. He, however, admits the fact that Miller's checks had been thrown out by this First National Bank, at the time, and his account overdrawn, and remaining overdrawn, and Miller neglected to pay, even though his attention was called to the matter. Hubbard evidently tries to make the best of the case, and to patch up and whitewash all the transactions between Miller and the bank, to make them consistent with Miller's supposed solvency. He is singularly oblivious as to facts which it is incredible that he should not have known. When Miller closed his account with the Monmouth bank, he swears, page 21, that he " got the money from the Frst National " Bank," and " settled up with the Monmouth National

"Bank at that time," and still, though this money was advanced to Miller for this purpose, to pay this debt to the Monmouth National Bank, Hubbard swears to entire ignorance of the purpose or object for which the money, some $4,000, was paid to Miller. He recollects the *loan*, but has no idea, apparently, what it was for. He disclaims even all knowledge or information as to the reason why Miller left the Monmouth National Bank, and came over to the First National Bank, to do his business. It is, however, not permissible for a bank with such relations as this First National Bank sustained to Miller, and in such circumstances as they were placed towards him, calculated to excite suspicion, and awaken inquiry, to abstain carefully from all inquiry, and remain in profound ignorance of facts entirely within their means of knowledge, with impunity. They are chargeable with such information as they might readily have obtained, and which, if known to them, would have made of the transaction of giving this trust deed a clear case of preference.

We would not be understood as expressing the opinion, that all this ignorance was actual on the part of the officers of the bank, for it strikes one forcibly that it must have been largely *feigned;* but if not, this does not destroy the real character of the transaction of giving the trust deed as a fraudulent preference, for creditors are chargeable with what they might, and as prudent men should have known, as well as for what they actually did know. Had these bank officers made the least inquiry they would have learned that the reason why Miller's account was closed with the Monmouth National Bank, and why they refused to pay his checks was, because he furnished neither money nor security to cover his over-drafts, or from which his checks could be paid or provided for, as Chauncey Hardin, the vice-president of the Monmouth National Bank, swears was the case—page 48 of printed record—Ints. 12 and 14.

Again. Alexander Gibson swears that he had a conversation with Henry Spriggs, one of the directors of the First National Bank, in which Spriggs told him — page 47 printed Record — "that he was one of the directors "of the First National Bank, and they *got suspicious of* "*Miller*, the way he was carrying on business, and that he "owed about $4,000 to the Bank; and they got at him to "give a deed of trust to secure them what he owed the "bank, *and he gave it.*" Spriggs, when called on to testify on this point by the defendant, seems to recognize the conversation referred to by Gibson, and says, in answer to the inquiry by interrogatory 3, p. 68, printed Record, whether he had this conversation: "This was a conver-"sation had between him and me;" and he gives his version of it, in which he says: "there was nothing about "suspicious" in it.

W. B. Jenks, who was a stockholder and director in the First National Bank, a witness called by the defendants, swears (pages 77 and 78 printed record,) that he had a conversation with the Bank officers, the president and cashier, about Miller, in September, 1871, and that he thought they had better get security on his land, and he told them so. The question is then put to him — interrogatory 12 — "What made you think so?" To which he replies: "From these rumors of his drinking," &c.; and he swears (page 79), "the president and cashier "agreed with him about the expediency of obtaining the "trust deed." Taking these circumstances in connection with the fact, known to the bank officers at the time the trust deed was given, that Miller anticipated making another loan of $10,000, at Galesburg, and the other circumstances referred to, existing at the time, and the notice from Wallace that Miller was "hard up"—"that "he would have to mortgage his land," and with the fact that he was largely indebted to this very bank for the first loan, which he made January, 1871, to pay off what he owed the other bank, and at the same time that he was

owing $2,300 for over-drafts, forbidden by the bank, and beyond the amount suffered by the bank, and that he failed to pay said over-drafts, or his indebtedness to the bank, for no other apparent reason, except that he was unable to meet the same, and the evidence presents about as strong a case as is ever presented of a fraudulent preference.

It is very seldom that the fraud can be proved by direct evidence, and the circumstances [illegible] indicate of the true character of the transaction, and show that this security was executed for the obvious reason that there was a strong probability that if the debt remained unsecured, it would never be paid. At all events, payment of debts at maturity, on the part of Miller, was out of the question, and the bank knew this as well as Miller, and though both may have *expected*, perhaps, that he would eventually get through and pay his debts, the bank had the fullest proof from their own dealings with Miller, as well as from surrounding circumstances, that he could not pay his debts as they matured, and that he was hence, within the meaning of the bankrupt act, "insolvent."

It is said that Miller continued to do business at this bank for some time after this trust deed was given. He did business after this with the bank for less than two months. His account closed on the 10th of November, and on the 19th of December the petition in bankruptcy was filed against Miller, and on the 22d of January following he was adjudicated a bankrupt. The short time he continued doing business at the bank after the execution of the trust deed does very little to relieve the situation, or divest the transaction of giving this security the character of a fraudulent preference. It was simply the winding up of Miller's business, and the money advanced to him was upon actual shipments of grain, and the anticipated proceeds therefrom, and even if it is to have the effect of showing that, in the opinion of the officers of the bank, Miller would ultimately pull through, the fact remains that at

the very time the trust deed was given Miller was hopelessly insolvent, and was indebted to the amount of some $5,000 to $7,000 over all the property he owned.

The bank had sufficient information to put them upon inquiry, and even if they were ignorant as to Miller's actual condition, it is of no avail to the bank, for they ought to have known better. They were fairly apprised from their own experience with him that he could not pay his debts as they *matured*, and if they had availed themselves of the means of information within their reach, they could readily have ascertained that he was utterly bankrupt, and that his debts would exhaust and exceed by thousands of dollars his means of payment, after all his property was converted into cash.

In taking this security, therefore, the bank took their chances. If Miller went through and paid up his debts, then all was well. If not, the security must, under the bankrupt law, be surrendered to his creditors generally, and equal division be made of his assets, in despite of all efforts by particular creditors to reach and appropriate his assets, or any portion of them, for the payment of their own demands; and when the attempt is made, as it is made here, to appropriate the bulk of the debtor's property, and take 330 acres of land by the trust deed providing for a sale on 30 days' notice, without redemption, that being all that he owned, except ten acres, to secure a debt of $6,500, leaving $17,000 of indebtedness utterly unprovided for, the case appeals strongly to a court of bankruptcy to interpose its power in the premises for the benefit of the general creditors, and to extend over them that benign protection which the provisions of the bankrupt law were intended to secure, by extending to creditors generally the equal and fair distribution for their benefit, of all the property of the debtor.

T. G. FROST,
Attorney for Appellant.

IN THE

Supreme Court of the United States,

OCTOBER TERM, A. D. 1877.

No. 242.

CHARLES E. GRANT, Assignee of JOHN S. MILLER, a bankrupt,
Appellant,

—*vs.*—

THE FIRST NATIONAL BANK OF MONMOUTH, ILLINOIS, JOHN J. GLENN, B. T. O. HUBBARD, and JOHN S. MILLER,
Appellees.

Appeal from the Circuit Court of the United States, for the Northern District of Illinois.

Argument in Reply on behalf of Appellant.

MILLER & FROST,
Att'ys for Appellant.

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Argument in Reply on behalf of Appellant.

The learned counsel for appellees say relief was claimed in the bill upon two grounds. "One was that actual fraud "had been committed by the bank upon Miller, in procur- "ing his execution of the deed of trust, and the other that "the deed was a fraudulent preference under the Bankrupt "Act. The case utterly broke down upon the first ground, "and it is not urged in the argument of counsel for appel-

" lant, but they seek refuge under the theory of fraudulent " preference."

In making this statement, counsel (inadvertently of course) convey a very wrong impression. We did not ask the court below to set aside the trust deed in question upon the first ground above suggested, viz: that " actual fraud had " been committed by the bank upon Miller, in procuring " his execution of the deed of trust." We have again read the bill in the light of this extraordinary statement, and we cannot find that the prayer for relief is based upon any such ground.

The sharp practice of the officers of the bank in obtaining this trust deed from Miller was brought out in the proof, and commented on at the hearing, as showing that these officers were at that time very solicitous about the safety of their debt, and that they were conscious of the fact that they were dealing with an insolvent person, and that by getting this deed of all his property they were leaving his other creditors to shift for themselves. As we are told by counsel that our opening argument " presents " a very imperfect statement of the facts," we will now endeavor to verify every important statement by the record.

I.

It is conceded that John S. Miller, on the 16th of September, A. D. 1871, executed to the First National Bank of Monmouth his promissory note for $6,500, payable in 90 days, with interest at ten per cent. after maturity, and that he, at the same time, executed to John J. Glenn, trustee, a trust deed of his farm, containing $328\frac{32}{100}$ acres, to secure the payment of this note, the trust deed containing a power to sell upon default after 30 days' notice. This was

given to secure the then supposed indebtedness of Miller to the bank. $4,000 of this indebtedness was represented by a note of John S. Miller, and Wm. J. T. Wallace as his surety, discounted by the bank in the latter part of January, 1871, and renewed for 90 days on the 30th of April, 1871, and again for 90 days on the 30th of July, 1871, and about $2,200 was a supposed over-draft, and the balance, $300, was paid to him by the bank. (Page 22, printed Record. Answer to question 45, page 26; question 46, page 26, and question 9, page 33.)

Lafferty the president of the bank, says, in answer to question 28, page 51, that when this trust deed was executed, $200 was paid to Miller in cash, and the rest to his credit, in all about $300.

Wallace was then insolvent. (Question 7, page 39). This embraced all Miller's land, with the exception of 10 acres, which he says was worth about $200. (Questions 1, 2 and 3, pages 26 and 27.) The aggregate of his personal property at that time was not much more than sufficient to supply the amount exempt from execution, including his homestead of $1,000. (Page 28.) He had, it is true, recovered a judgment against Notley Scott & Son for unliquidated damages in an action for a breach of contract for $990, but they had taken it to the Supreme Court. (Question 3, p. 32.) There is no evidence that these parties were worth anything, and, in estimating the value of his assets, this should be disregarded. Miller said his land was then worth $40 per acre. (Question 9, page 27.)

W. B. Jenks, one of the defendant's witnesses, says he think it was worth $50 per acre. (Question 21, page 76.)

At 40 per acre, $328\frac{33}{100}$ acres would be....$13,132.80

At $50 per acre it would be..... 16,416.00

Miller says the amount of his indebtedness at that time was over $20,000. (Question 35, page 24.)

Wallace says that about the 1st of June, 1871, he and Miller made a calculation of the amount of Miller's indebtedness, and it was about $17,500, and afterwards they found out they had omitted about $3,500. (Question 10, page 40.) It turns out that his indebtedness, on the 16th of September, 1871, amounted to over $24,000. (Pages 34 and 35, and answer to question 21, page 35.) He was then not only insolvent, but hopelessly bankrupt.

On the 19th day of December, 1871, a petition was filed in the District Court of the United States in behalf of his other creditors to have him declared a bankrupt, and he was duly adjudicated a bankrupt, January 22d, 1872. (Page 18.)

The only question in the case is, whether the officers of the First National Bank, on the 16th of September, 1871, knew, or had reasonable cause to believe, that he was insolvent.

1st. For three years he had been engaged in the business of buying stock in the country, and selling it in Chicago. During all this time, excepting an interregnum of about three months, his financial connection was principally with this bank. His transactions with it amounted to $237,000. (Question 16, page 50). He obtained money from the bank, to pay for stock as he bought it, and the proceeds of sales were deposited to the credit of the bank in Chicago. (Questions 20, 21, page 54). His custom was to check on the bank in advance of the sales; that is, he anticipated, for a few days, with these checks, the sales of his stock, making arrangements with the bank at the time of drawing them for their re-payment. (Questions 24, 25, 26, and 27, page 61). He had known the president and cashier of the bank for about fifteen years. He had never owned, and was never supposed to own anything but this farm, and he was considerably in debt when he went into the stock business. (Question 12, page 20).

As the bank furnished him the money with which he purchased the stock, and received the proceeds of the sales, the officers of the bank must have known whether he was doing a profitable or unprofitable business. The bank was located in a small town, and, of course, had but few customers. Under these circumstances, it is impossible that Miller could have reached a point where he was owing nearly twice as much as he was worth, and the officers of the bank not know that he was insolvent, or approaching insolvency. Of all persons in the world, the banker is the quickest to detect any unsoundness in the financial condition of his customer. He deals in credits. This is his daily occupation, and he acquires great skill in ascertaining and forming a proper estimate of the pecuniary resources of those he deals with, and no one has a better judgment than he of the hazards incident to their business enterprises. He is constantly on the alert to know whether they are making or losing money. His questions are never regarded as impertinent, for they relate to that in which he is himself deeply interested.

He regards as significant many things that an ordinary observer would treat as indifferent, and frequently the customer receives from his banker the first intimation of his own insolvency. This is true of ordinary cases.

2d. There was much in Miller's character and habits to excite suspicion of his business ability and judgment, and, consequently, of his financial soundness. Lafferty, the president of the bank, says that he was an illiterate man, (question 16, page 54), and that there were reports in circulation that he was reckless in his habits. (Question 11, page 53). Hubbard, the cashier, speaks of his having been caught in a bawdy house in Monmouth. (Question 39, page 63). Defendant's witness, W. B. Jenks, who was a stockholder and director in the First National Bank in 1871, and a member of the exchange committee, says that

prior to September 16th, 1871, he heard rumors to the effect that Miller was a drinking man, and addicted to running after bad women. (Question 13, page 77). He himself says he can write his name only. (Question 15, page 33). He was ambitious to be known as doing a large business, and was more interested in the size than in the profits of his transactions. (Harding's testimony, page 43, where he gives the reasons that influenced the officers of the Monmouth National Bank to refuse payment of his check. Defendant's witness, J. G. Moore, in answer to question 10, page 71, says: "People always thought that "he—Miller—would pay pretty good prices when he "came around. If they could not get their prices, they "would wait until Miller came around.")

A banker would trust such a man only with the expectation that when he weakened, he would, by his influence over him, be able to obtain security in advance of his other creditors.

3d. There were numerous instances of Miller's inability to pay his debts as they matured, which were well known to the officers of the bank, for they transpired in connection with his dealings with the bank. After he dissolved his partnership with Wallace in June, 1869, he continued to buy and sell stock on his own account. He obtained money from the First National Bank of Monmouth, The Monmouth National Bank, and three banks in Galesburg. He commenced borrowing from the Monmouth National Bank in November, 1870, and continued with it until January 21st, 1871. During this time he did not borrow from the First National. (Question 17, page 21.) In answer to question 21, page 21, in giving the reason why he withdrew from the First National Bank of Monmouth in 1870, and went to the Monmouth National Bank, he says: "I had been having them to lift some notes, and I "gave a check for about $100, and they wouldn't pay it.

" Hubbard, the cashier, and I had a few words about it, " and I asked him why he did not talk to me in place of " throwing out the check. He said he had been telling " me that I had been running over, and it wouldn't do. * * " I told him I would go where I could get money, and I " wouldn't have anything more to do with them. I went " over to the Monmouth National Bank."

He continued with the Monmouth National Bank until January 21st, 1871, and then went back to the First National. In giving the reason why he left the Monmouth, in answer to question 18, page 21, he says: " As near as " I can recollect, they wanted three men for security, and " I had been given but two to renew a note. I forget the " amount. They proposed that I should give a mortgage " on part of my land. I declined to do that also, and they " said they would not do anything more till I fixed it up, " and, I think, they refused to pay some checks."

Frank W. Harding, who was assistant cashier of the Monmouth National Bank, states the following as the reason why Miller went away from that bank:

" Well, the reason we ceased doing business with him, " we were not satisfied to pay his checks on the paper of " W. J. T. Wallace, on his note for security, as apparently " Miller was doing a reckless business in shipping. I " asked John Miller if he knew whether he was losing or " making money in shipping, and if he knew how his ac- " count stood? He said he did not, but he was doing the " biggest business of any man in the country—shipping " more stock than any man in the country. That sug- " gested to the officers of the bank that if he did not " know anything about his business, whether he was " making or losing with the large business he was " doing, that they were not satisfied to continue to carry " John Miller upon his and W. J. T. Wallace's paper. The " vice president of the bank spoke to Mr. Miller, and de-

"sired him to give a trust deed as additional security for "the payment of the money loaned him. Mr. Miller said "he would not make any different paper. He would not "make a trust deed. He considered his and Big Wal- "lace's paper sufficient security. Well, John Miller, about "this time, shipped a large amount of stock which he had "bought, and which he may have had on his farm, and it "paid up. This shipment paid the amount standing "against him on the ledger, and we then told him (when "he wanted to make a check on us for a large amount of "money), that we could not pay any more of his checks "until he had put in other securities. Notwithstanding "that, he said he was going to check on us, and did so, "and we refused payments on his checks." Question. "What was the amount of his checks?" A. "About "four thousand dollars, I think. I am not positive. *These "checks were brought in to us by the First National Bank "for payment by Mr. Young.*" Question, page 44: "Can "you tell what day the checks were presented by Mr. "Young?" A. "I cannot exactly, though my impres- "sion is that it was after the 18th. We had no evidence "on our books that they had been presented." Question, same page: "What did you tell Mr. Young when he "presented them for payment?" A. "I think I told "him that I was not paying those checks to-day."

He obtained from the First National Bank the amount necessary to pay this over-draft—$4,000—upon giving his note for that sum, with W. J. T. Wallace as surety.

(Question 23, page 22). This note he was not able to pay when it matured, and it was renewed for 90 days; when it again became due, he was not able to pay it, and the bank renewed it a second time for 90 days. This last renewal was on the 30th of July, 1871. (See page 22.)

On the 11th of April, 1870, he borrowed of B. T. O. Hubbard, the cashier of the First National, $1,137.50, for

one year, for which he paid interest at 15 per cent., and gave two notes to secure it. (Page 23.)

A transcript of his account with the First National Bank is contained in the record, on pages 80, 81, 82 and 83.

It purports to be a statement of all the money he drew out of the bank, and all the money he paid into it, as the same was paid in and drawn out.

Counsel for appellee say that every item of debt and credit is given in this transcript. (Page 4 of appellee's brief.)

From this account it appears that on the 1st of July, 1871, his over-drafts in this bank amounted to $211.14.

On the 1st of August it amounted to $4,389.63; on the 1st of September to $3,889,39, and on the 16th of September to $2,034.95. We have compared the printed statement with the exhibit on file in the Circuit Court, and find the printer made a mistake in respect to the check drawn on the 21st of August. It should be $1,423.35, instead of $423.35. The other figures in this column, and the column on the credit side are correct. It appears, then, from this account, that his largest amount for over-drafts was on the 1st of August, the amount then being $4,389,63. During that month he reduced it to $3,889.39. The bank then refused to allow him to make any further drafts upon it.

In stating the reason why he did not ship any stock other than two lots, between the 21st of August and the 16th of September, he says (question 8, page 33): "I "went to Lafferty to get some money. He said he "guessed I had better fix this matter before I did much "more. I did not ship more because they would not let "me have the money to buy with." Accordingly we find, upon looking at this account, that from the 31st of

August to the 18th of September, he checked out only $24.13. One being an item of $12.12, and the other of $12.02, although during this period he deposited in the bank $1,878.58, thereby reducing his over-draft to $2,034.95. This shows that the officers of the bank from the 1st of August, had directed their attention to procuring a reduction of this over-draft, and that for more than two weeks prior to the 16th of September, they stubbornly refused to let him have any more money, although during that period he deposited with them $1,878.58. They applied it upon the over-draft, and refused to let him draw any of it out. This shows that they then regarded him as unsafe.

4th. Miller told Hubbard, as early as the middle of August, that he was falling behind. In answer to question 26—page 36—he says: "Two or three months before I quit "getting money at that bank, I told Hubbard that there "must be something wrong. I was a good deal more "behind than I expected by the way he said that I stood;" and in answer to question 31, page 37, he says this was not far from the middle of August. Hubbard knew his indebtedness to Martin, of $770 — to Brown, of $575 — to Moran, of $540 — to Diffenbaugh, of $700, and to Bain, of $1,300, (page 34 of record,) amounting in all to $3,885; for he says that Hubbard wrote the notes, and they were given at the First National Bank. (Question 1 on his re-examination, page 38.) Wallace, in answer to question 5, page 39, says that all these notes were payable to B. T. O. Hubbard. In answer to question 9, he says that Miller lost, during the year, prior to Sept. 16, 1871, over $8,000. Wallace, in answer to question 11, page 40, says: "I think, about the "last of June, 1871, as well as I now recollect, I had a "conversation with William Lafferty, President of the "Bank. I told Mr. Lafferty, in that conversation, that

" Miller would be obliged to mortgage his land. I asked
" Mr. Lafferty if he did not think it was the best thing that
" Miller could do. He said he thought it was. I told Mr.
" Lafferty that I was determined to cut loose from Miller,
" and that his land was no better than mine, and he would
" have to mortgage his, as well as me. That is the sub-
" substance of the conversation. There was more said,
" but I cannot recollect what it was. I and Lafferty had
" another conversation about the 10th of September, 1871.
" We had another conversation — I went to Mr. Lafferty,
" to see if he could not help raise $10,000 on Miller's
" farm. He said he did not know where it could be had.
" He asked me how many fat cattle and hogs Miller had on
" hand. I told he had not any. He said he thought Miller
" had both fat cattle and hogs yet on his farm. In conversa-
" tion I told Mr. Lafferty that I was getting shaky of Miller,
" and I was determined to cut loose from Miller. About
" the time that I had the first conversation with Lafferty,
" I think the same day, I had a conversation with B. T. O.
" Hubbard, cashier of the First National Bank. I asked
" Mr. Hubbard if he knew where I could get $2,500, and
" mortgage one 80 acres of land. He said he thought I
" could get it of William Lafferty. I told Mr. Hubbard
" that I had lost a good deal of money, and I intended to
" mortgage my land, and that John Miller had got to
" where he would have to do the same. He said it was
" the best thing we could both do. I had another conver-
" sation with B. T. O. Hubbard, either on the 15th or 16th
" of September, 1871. He called me into the bank, and re-
" quested me to see Miller, and try to get him to give
" them a mortgage for what he owed them. He said
" Miler had to do something; that he had run behind, I
" think, about $2,300. He said that they had been trying
" to get John to give them a mortgage on two 80 acres of
" land, and for me to tell Miller if he would give him a
" mortgage on two 80's of his land, that it should not

" be put on record, and no one should know it except me " and Miller, and them, and that he would see if he could " not raise, in some way, $10,000, on long time, by Miller " giving a mortgage on his farm. I went out on the " street, and saw Miller, and told Miller what Hubbard " said. Miller said that he was hard up, and wanted some " more money; if I would see Hubbard, and he would let " him have some $300, and keep the mortgage a secret, " that he would do it. I and Miller went to the bank; I " told Hubbard what John said. He said he would let " him have enough money, with the $4,000 note that we " then owed, and Miller's over-draft, to make out $6,500. " Hubbard counted up what interest would be coming " back on the $4,000 note, and what the over-draft was, " and paid Miller somewhere from —— to $300 — that is " all I know about the mortgage, and about all the con- " versation I had with them, that I now recollect."

Wm. Lafferty, the president, says that he was informed by Wallace, of the indebtedness of Miller about the middle of October, 1871, and Wallace said that Miller was hard up; that the amount of Miller's indebtedness, as they figured it up, was nearly $22,000, (Questions 17, 18 and 19, page 50), and as to whether he had the conversation with Wallace on the 10th of September, which Wallace narrates, he says: " If there was any such conversation with " Wallace, I have not been able to call it to mind. I have " thought the matter over, and I cannot recollect such con- " versations, but would not be positive there was one." (Question 22, page 51.)

In answer to question 31, page 52, he says: " Some " two or three weeks after the trust deed was given, he " (Miller) was drawing out money a little faster than he " was putting it in, and I objected to his having any more " until he fixed things up." He thus locates the time when he was informed of Miller's indebtedness in the

neighborhood of the time when he interdicted his overdrafts.

The bank account shows that he stopped these overdrafts about the 1st of September, some two weeks prior to the execution of this trust deed, and he did not interfere with them after the 16th of September, for no overdrafts were made at that time. On the 18th of September, he was credited with the proceeds of the $6,500 note, which was $6,315.35, the balance was the discount and interest upon his overdrafts. (Hubbard's testimony, answer to 37th question, page 62.)

On the same day he gave his check for $4,200.02. This included the $200 of cash paid to him with the note of $4,000. (Lafferty's testimony, answer to question 38 page 51). This left $128.13 to his credit in the bank. This agrees with Hubbard's statement in answer to question 37, page 62. After this time he did not overdraw his account with the bank, except for two or three days at a time. It appears from the account itself, that each overdraft was an immediate anticipation of a corresponding deposit to be made from the proceeds of sales, and must have been in pursuance of an arrangement with the bank at the time. For instance, he checked $1,500 on the 25th of October, and $1,355.20 on the 27th. He deposited $2,655.56 on the 30th of October. He checked $565.13 on the 28th of October, and deposited $560.60 on the 1st of November, and on the 10th of November, after his last deposit was made, the bank was indebted to him $226.83, and he drew it out on the 11th. After the 18th of September, when the note of $6,500 was placed in the account, he drew out $6,893.30, and during the same time he deposited $6,765.17, and this with the amount standing to his credit, just balanced the amount he checked out, and there was no time during this period when his account could fairly be said to have been overdrawn. So that Lafferty's testi-

mony agrees with that of Wallace, except in respect to the time when he received information of the indebtedness of Miller. He gives no other reason for locating it about the middle of October, than that Miller was drawing money faster than he was putting it in, and he told him that he could not have any more until he fixed things up. The account, as we have already said, clearly shows that this took place long prior to the 16th of September.

A. M. B. Jenks, who was a stockholder and director of this bank during the year 1871, and a member of the Exchange Committee, says in answer to question 11, page 77, that he told the president and cashier in September, 1871, that they had better get security on Miller's land, and in answer to question 28, page 79, he says he thought the bank unsafe unless they should get something to make the debt secure. This is the person who lent Miller $500, without taking his note for it, and counsel for appellee places this fact before the court as evidence of his great confidence in the solvency of Miller at that time. In answer to question 36, page 79, he says that he gave this money to Miller in anticipation of the sale of stock he had sent to Chicago, and it was to be repaid to him as soon as he got a return from that shipment. It was not therefore a loan upon the general credit of Miller, in the ordinary sense of that term.

5th. The manner in which the officers of the bank obtained this trust deed, clearly shows that they knew at the time that Miller was insolvent, and that they were endeavoring to get their own debt secured, regardless of the interests of his other creditors. It should be borne in mind that this note for $4,000 had not then matured. It had 45 days to run. Miller gives a full account of this on pages 25 and 26 of the record. He says: "I was owing "them $4,000, by a note, and Wallace was security. I "was owing the bank $2,200 besides the note, and the

" said bank let me have $300 in money if I would secure
" the whole by a mortgage. The note was for money
" that I had got of them before that time, and the $2,200
" was overdraft made at various times. I talked with B.
" T. O. Hubbard, the cashier. I think it was the day be-
" fore I signed the note and mortgage. He was at me to
" give a mortgage, and I said I did not like to do it. He
" said it was the best way, and then I could go right along
" on my own footing. I said if I had started in that way
" it might have done; but now I don't think it would look
" very well. I said it would make people kind of 'fraid of
" me. He said no one need know anything about it. I
" said it couldn't be got up without their knowing it. It
" would have to be on record, and they would see it. He
" said they could get it up right there, and leave it right
" there, and wouldn't put it on record, and no one need
" know anything about it; that is all I know about that
" talk. I talked with Fred. Hubbard, the cashier, I think
" the day before I signed it. He said I could give a mort-
" gage on the two south 80's of my land. He wanted to
" know the numbers of my land. I told him I couldn't
" tell them. He said they could find out themselves. I
" came in the next day and signed the mortgage, as I had
" an idea it was on the two 80's. After I signed it, Hub-
" bard handed me this paper:

"EXHIBIT F.

" 90, 92 a, lot 2, S. E. 24, 12 N., 2 N.
" 79, 40 a, " 2, N. E. " " "
" 80, W. ½, N. E. 25, " " "
" 78, E. ½, N. W. 25, " " "

" 328

" and asked me if it was all right. I said if it was not, I
" could find out and let him know. I said I thought you
" was only going to take it on part of my land, in place of

" all of it, because I would like to have got as much as " $10,000. He says we aint buying your land; this is only " got up temporarily until you can do better. I told him " I was going to Chicago to see if I couldn't get money " for less interest. That is all I know about it. I did not " read them—trust deed and note—before I signed them, " because I am a very poor hand to read writing, for one " reason, and I thought that Hubbard would have it all " straight. They were not read over to me by any one." In stating the inducements that were held out to him to induce him to execute these papers, he says, in answer to question 45, page 26: " The day before I signed that " mortgage, as nigh as I can recollect, Hubbard said he " would let me have about $300 more money—that would " make $6,500 in all." In answer to the next question, he says: " It was paid to me by Hubbard, cash, I think, the " same day I signed this mortgage, or trust deed. It is " the same sum mentioned by me as above stated." This narration is made by a person who has no pecuniary interest whatever in the result of this controversy. It harmonizes with the bank account, and every fact proved in the case. It is plain, simple, and manifestly true. It appears from it that these officers practiced deception upon Miller, in procuring his execution of the trust deed. They asked him in the first instance, for security upon two 80's, leaving to him the balance of his farm unincumbered, and which he would have to assist him in taking care of his other debts. Having obtained his assent, they put the whole of his land in this instrument, keeping that fact concealed from him until after he had signed it. They spoke to him about giving a mortgage, which, of course, would leave in him an equity of redemption, and give him some opportunity to raise the money by a sale of it, before this equity should be foreclosed. The instrument which they placed before him for execution, and which he ignorantly executed, was a trust deed, which granted a power to sell

all his interest in this property in 30 days after a default in paying the note.

To induce him to sign this trust deed, they advanced him $300 in cash. This, he was then very much in need of, for they had refused to allow him to draw anything out of the bank for more than two weeks, although he had deposited with them during that time, more than $1,800. Miller told them that to give a mortgage, even upon two 80's, would injure his credit. They replied that they would keep it from the record, and no person should know anything about it. Now, the mortgage was not filed for record until the 26th of September. (p. 16 of Record.) This corroborates Miller's statement.

In attempting to give a reason for keeping this important document from the record, Hubbard, in answer to question 34, page 57, says "he did not want it put on "record, for he was sure he would have the money in the "course of a couple of weeks, and did not want to be at "the expense." This is manifestly untrue. The expense involved could not exceed $1.00, and it furnishes no reason for so important a transaction as this. It was evidently kept from the record in pursuance of this promise made to Miller, to appease his scruples about his credit, and that furnishes a sufficient explanation of it. Moreover, it did not belong to him, but to the bank, to pay the recorder's fees. This same witness says, in answer to question 43, page 58, that he did not promise to give Miller $300, if he would execute the note and trust deed. This statement of the witness is equally untrue, for he is contradicted by the testimony of Miller, Wallace, Lafferty, and the bank account. This same witness is asked (see question 3, page 63), "what was Miller reputed as worth at the time the "trust deed and note was taken, the 16th of September, "1871?" and he answers, "at least $30,000, over his in-"debtedness." This statement is also untrue, in the light

of the other testimony in the case, and the witness himself could not have believed it, for he knew, as everybody else knew who was acquainted with Miller, that the only property he had was this farm of 338 acres, and no other witness in the case pretends that he had a reputation for being worth any more than the money he had in his farm, and what stock and personal property there may have been upon it.

Lafferty, in answer to question 32, page 52, who had known Miller as long and as well as Hubbard, in speaking of his pecuniary responsibility at that time, simply credits him with the ownership of this land.

6th. Counsel in their brief which they have filed, say that Miller, at the time he executed this trust deed, owed in Galesburgh, in the adjoining county of Knox, $9,350. "But of the existence of any indebtedness in that county, "the officers of the First National Bank of Monmouth "were entirely ignorant;" and they refer to the testimony of this witness, Hubbard, on page 58, in which he says that he knew nothing of Miller's indebtedness to banks in Galesburgh, and first learned of it about six weeks after the trust deed was executed. It is not pretended anywhere, that either he or any of the officers of the bank asked Miller at the time, or before he executed this trust deed, how much he owed, but they were careful to avoid any inquiry upon that subject. They were, therefore, purposely ignorant of the amount of his debts, and ignorance thus induced, cannot shield them. They knew that he was, and had for a long time been, doing a large speculative business, and that he was in the habit of getting money from other parties, in large sums. They had even assisted him in procuring this money. They were about to take a first lien upon all his property to secure the debt he owed the bank. Had for more than six weeks been laboring with him to reduce his over-drafts. Had for the

last two weeks of the time stubbornly refused to allow him to draw any money from the bank. Under these circumstances, the spirit of the bankrupt law clearly imposed upon them the duty to inquire concerning his other indebtedness, and they cannot now plead ignorance of it.

They had all the knowledge that was necessary to excite inquiry, and put them under an obligation to make it, and they are therefore clearly chargeable with a knowledge of all the facts such inquiry would have disclosed. The question is whether *they had reasonable cause to believe that Miller was then insolvent.*

On this point we desire to cite the language of this court, in the opinion of Justice HUNT, in the case of the Merchants' National Bank of Cincinnati, filed November 12th, 1877:

"It is scarcely necessary to discuss the authorities as to "the meaning of the words, 'having reasonable cause to "'believe the party to be insolvent.' When the condition "of a debtor's affairs are known to be such that prudent "business men would conclude that he could not meet his "obligations as they matured in the ordinary course of "business, there is reasonable cause to believe him to "be insolvent.

"Knowledge is not necessary, nor even a belief, but "simply reasonable cause to believe."

II.

Counsel for appellees say, at page 2 of their brief:

"Even if it could be held that the deed was construct-"ively fraudulent as to the $4,000, it must be sustained as "to the $2,500." And again they say, on page 13: "Only "the sum of $4,000 was a precedent debt; the sum of

" $2,500 was advanced upon the faith of the deed of trust, " as shown in the testimony of Mr. Hubbard, which we " have quoted;" and they quote largely from his testimony, on page 7 of their brief.

Hubbard says, in answer to question 13, page 56: " We " had a note of his of $4,000, that we were carrying " along, and which we had renewed several times, at " least—I don't remember how many. He wanted more " money, for the purpose of buying stock to put on his " farm—$2,000 to $2,500—and proposed, if I would ad- " vance him that, that he would take up the $4,000 note, " and give us a trust deed or mortgage to secure the " whole, which I did, having advanced him the $2,500, or " thereabouts, *a short time previous to the execution of this.*"

In answer to question 31, he says that Miller told him, on the day the trust deed was executed, or the day before, in the First National Bank of Monmouth, that he was worth $30,000, and did not owe over $10,000, or words to that effect. And, in answer to question 32, he says this statement was made at the time he made arrangements to draw out the $2,000 or $2,500. He here brings the arrangement to draw out the $2,500 within one day of the execution of the trust deed, and he seeks to create the impression that this indebtedness of $2,500 was incurred under and in pursuance of a special arrangement, under which the bank advanced to Miller $2,500—relying, in making this advance upon Miller's promise to secure it, together with the note the bank then held, by a mortgage of his farm. The officers of the bank give this as their reason for taking security for the note so long before it became due. We think we are justified in saying that this part of the defendant's case is a sheer fabrication, and it rests entirely upon the testimony of Mr. Hubbard. Lafferty does not pretend to know anything about it.

The bank account, which contains, as counsel for appel-

lees says, every item of debt and credit that appears in Miller's dealings with the bank, is the most reliable testimony in the case. It is much better than even the recollection of an honest witness. It utterly overthrows this portion of the defense. It appears from it that during a period of more than two weeks prior to the execution of this trust deed the bank advanced to Miller only $24 and 14 cents' and this upon two checks. During the month of August they did not advance to him as much as he paid in into $500.24.

We respectfully submit, therefore, that this claim of the defendant's is baseless, and that it stands in no better position than the note for $4,000. That the entire amount, with the exception of the $300 paid to Miller, was a precedent debt.

Counsel for appellees insist that we have greatly erred in our conception of the rule of law as laid down by this court. They say, on page 5 of their brief: "about "the 14th of January, 1871, Miller borrowed $4,000 from "the First National Bank, and gave his note, with W. J. "T. Wallace, as security, maturing in ninety days. When "it matured the signers asked to have it renewed, and it "was renewed, and renewed the second time. This is "certainly no evidence of insolvency. If it be so, almost "every borrower from a bank is to be considered legally "insolvent, for the custom of renewal of bank notes is, in "the West, almost universal, so long as the security is sat-"isfactory." * * * * * "About th
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And on page 12 they ask:

"On what possible ground can it be said this deed "was a fraud on the bankrupt law?" and then follows the statement: "Counsel for appellants insist he "(Miller) was known to the bank to be insolvent, because "he did not pay his indebtedness as it matured, referring, "we suppose, to the fact that he procured the $4,000 note "to be twice renewed," and they add: "We respectfully "submit that learned counsel have wholly misconstrued "the language of this court. It is not possible this court "has intended to be understood that the borrower from a "bank is to be considered as legally insolvent, merely be-"cause he pays up the interest and gets the note renewed "at its maturity."

We have never claimed that the mere fact of the renewal of a note at maturity and in the ordinary course of business, considered by itself alone, was evidence of insolvency; or that it charged the officers of the bank giving the accommodation with notice of the insolvency of the borrower.

It is the circumstances in which the note originated and which accompany its renewals, tending to show why it was so often renewed, that in this case indicated the fact of insolvency, and which furnish not only as the possible but the probable explanation of the transaction, his inability to pay the note at its maturity, and to discharge his debts as they fell due, and which were certainly calculated to excite the suspicion of a prudent business man, and provoke inquiry concerning his conduct and pecuniary circumstances. These circumstances a prudent creditor, especially a banker, always regards. Even an application for a renewal, of itself alone, if repeated a sufficient number of times, would be sufficient, without other circumstances of suspicion, to put the bank officers on inquiry.

The fact of his actual insolvency being established be-

yond question, the point is: Was there enough in this case, in the circumstances heretofore particularly detailed taken in connection with these repeated applications for renewal, and these overdrafts, to put the officers of the bank upon inquiry?

If, as stated by the counsel for the appellees, the $4,000 note was given about the 14th of January, 1871, and payable in ninety days, it would mature about the 15th of April, 1871, and if it was then renewed for ninety days longer, it would mature on the 15th of July, 1871, but the testimony shows, and the counsel for appellees admits, that the second renewal note was not given until the 30th of July, 1871, for it did not mature, as we are told, until the 30th of October, 1871, so that the second note must have remained overdue for nearly two weeks, before it was again renewed, viz: from about the middle of July to the 30th of July, when the second renewal note was given. Miller himself swears, in answer to Interrogatory 20, that the note was renewed on the 30th of July, and he also swears, in answer to Interrogatory 38, that instead of the overdrafts for $2,200 being made or arranged for about the 1st of September, they had been due for an entire month, prior to the 16th of September, when the trust deed was given. And it appears from the bank account, as we have already stated, that on the 1st of August the overdraft was over $3,800, and that the bank gave him no money on the 1st of September, or after that time; his overdraft was in fact due for more than six weeks prior to September 16th.

This $4,000 was borrowed, as the testimony shows, by Miller of the First National, to pay off the debt he owed to the Monmouth National, which latter bank he left because his checks were thrown out, for the reason, that he had neither money nor securities to meet or protect them.

Why did he not pay the note at maturity? *Why* did he

not pay the over-drafts, and why, when urged to take care of them, did he let them lie over unpaid for a month before the trust deed was given? Because he was pressed by debts in every direction, and could not pay his debts as they matured. Was this merely an ordinary renewal in the usual course of business, exciting, and calculated to excite, no suspicion?

We are told the note given on the last renewal did not fall due till the 30th of October.

Was it according to the usual course of business to secure a note by trust deed of a man's property before it fell due? Was not this an unusual exaction to make of a man of unimpaired credit, and in perfectly good financial standing, to compel him to give security upon all his real estate, and a power of attorney to sell it, on 30 days notice, before even his obligation had matured? Why was this extraordinary measure resorted to by the bank? Simply because their suspicions were excited, that danger was apprehended, and that the probability was, as the sequel showed, that if they waited till the maturity of the note before obtaining the security, the debt would be lost, or a fraction only of the debt would ever be paid. This, taking in the whole situation, and all the surrounding facts, it is obvious was the real reason, and the only reason, for this extraordinary action on the part of the bank.

This, we are advised by the counsel for the appellees, was merely the ordinary case of a renewal of the note of a valuable patron of the bank, which should excite no suspicion, and cause no apprehension to the bank officers of the failing credit or doubtful condition of Miller. Is there any good sense or sound logic in this view of the case, or any good reason shown to establish the charge against us in this case, of a total misapprehension of the rule of law in bankrupt cases, and in regard to illegal preferences?

The fact is, the bank officers evidently knew a good

deal more than they are willing to admit, and they ought to have known, and could have known by proper inquiry much more than they actually did know. The inference is, from all the facts, and the conduct of the bank officers, that they did not care to know any more than they actually did know on the subject. They were fully satisfied of the weak financial condition of Miller, and they acted precisely as they, in the natural course of things, would act if they thought that Miller was actually *insolvent*, and on the verge of bankruptcy.

They did not wish to make further inquiries, but at once acted with energy and decision, and immediately forced this security out of Miller, for their own exclusive protection, at the expense of his other creditors.

This the general policy and express provisions of the bankrupt law condemns, and for this reason, the trust deed in question should be set aside.

MILLER & FROST,

For Appellant.

Argument for

IN THE

Supreme Court of the United States,

OCTOBER TERM, A. D. 1877.

No. 242.

CHARLES E. GRANT, Assignee of John S. Miller,

—vs.—

FIRST NATIONAL BANK OF MONMOUTH, et al.

Appeal from Circuit Court, for Northern District of Illinois.

ARGUMENT FOR APPELLEE.

LAWRENCE, CAMPBELL & LAWRENCE,

FOR APPELLEE.

CHICAGO:

BEACH, BARNARD & CO., LEGAL PRINTERS, 104 RANDOLPH STREET.

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ARGUMENT FOR APPELLEE.

The court has already been informed by the argument for appellant that this was a bill in Chancery, brought by Grant, as assignee in bankruptcy of John S. Miller, to set aside a deed of trust upon certain real estate, made by Miller, on the 15th day of September, 1871, to secure a note for $6,500, payable to the First National Bank of Monmouth, Illinois.

The argument for appellant presents a very imperfect statement of the facts, and in order that the court may

have a correct understanding of the case, it will be necessary for us to state them more at length. When they are fully in possession of the court, we can not doubt that your Honors will take the same view of the case with the learned Judge who heard it in the court below, and decided it after full argument and patient investigation.

As appears by the statement of the case given in the argument for appellant, the bill claimed relief upon two grounds. One was, that actual fraud had been committed by the bank upon Miller in procuring his execution of the deed of trust; the other, that the deed was a fraudulent preference under the bankrupt act. The case utterly broke down upon the first ground, and it is not urged in the argument of counsel for appellant, but they seek refuge under the theory of fraudulent preference. To this we address our argument.

POINTS.

We shall show,

1st. If Miller was in fact insolvent when he executed the deed of trust, the officers of the bank had no knowledge of the fact, nor any reasonable cause for believing it.

2d. The deed of trust was given to secure $6,500, of which only the sum of $4,000 was a precedent debt, the remaining $2,500 being for money advanced under the provision of the deed. Even if it could be held that the deed was constructively fraudulent as to the $4,000, it must be sustained as to the $2,500.

ARGUMENT.

The bankrupt, John S. Miller, was a farmer in Warren County, Illinois, of which county the city of Monmouth is the county seat, and there the First National Bank of Monmouth was located. Miller owned a well-improved and well stocked farm of $328\frac{33}{160}$ acres, unencumbered, and worth, as appears by the testimony, (page 76 of printed record), fifty dollars per acre. It is true Miller, in his testimony, puts the value at only $40 per acre, but his testimony throughout is evidently colored by hostility towards the bank, against which he is the chief witness, and he testifies, (page 35 of printed record), that he is anxious to defeat the trust deed. Although he states the value of his farm at $40 per acre, it further appears by his own testimony, that in the spring of the same year in which the deed of trust was given, he had sold eighty acres at $60 per acre with no building upon the piece sold except a school house, which he did not own. The rest of the farm was all improved except ten acres of timber and eight acres of prairie, with two "tolerably fair" houses and a "right good barn," (page 29); the barn alone being worth, as he says, $2,000. It is plain, therefore, that the farm must have been worth $50 per acre.

This large farm was largely stocked with horses, cattle, hogs, and all sorts of agricultural implements, and the total value of the land, and the property belonging to it, must have exceeded $20,000. Besides this, he had a judgment for $990 against a firm called Notley, Scott & Son.

Besides managing this farm, he was engaged, like many other energetic farmers in Illinois, in the business of buying cattle and hogs, and shipping them for sale to Chicago. This business requires the handling of considerable ready

money, and to supply it furnishes use for a considerable part of the funds of the country banks at certain seasons of the year. The business is a safe one for the banks, if the stock dealer is honest. He first establishes a credit with the bank to a certain sum, upon which he checks as he makes his purchases through the country, and to refund the bank, draws in its favor against his shipment.

Miller engaged in this business in June, 1868, having first established a credit with the First National Bank of Monmouth. He continued in it until March, 1871, shortly before he was put into bankruptcy. During all this period, about three and a half years, he did his business chiefly with the First National Bank of Monmouth, and it amounted to two hundred and thirty-seven thousand dollars. This is the testimony on page 50 of printed record, and it also appears in the transcript of his entire account with the bank, to be found from page 80 to 83, inclusive, of the printed record, every item of debt and credit being there given.

We have said he did his business chiefly with the First National Bank, but in November, 1870, he opened an account with another bank in Monmouth, called the Monmouth National Bank, and closed it in January, 1871, in consequence of ill feeling growing out of an over-draft. It now appears that he did business in 1871 with two banks in Galesburg, in an adjoining county, but of that fact the First National Bank of Monmouth had no knowledge until the execution of the deed of trust in question, and about the time when bankruptcy proceedings were commenced.

His debts in September, 1871, when the trust deed was given, due in Warren County, amounted to $6,790, besides what he owed the bank. This, however, includes $1,600 of debt in which he was only security. His own indebtedness in that county, besides what he owed the First

National, amounted to only $5,190. (Page 50, printed record.) He owed in Galesburg, in the adjoining county of Knox, $9,350, but of the existence of any indebtedness in that county, the officers of the First National Bank of Monmouth were entirely ignorant. (Page 58 of printed record.)

The pecuniary condition of Miller was one of insolvency, so far as that word means the present inability to pay one's debts. But the important question is, whether the First National Bank of Monmouth knew that fact, or had any reasonable cause for believing it.

Here we stand on solid ground. The evidence showing the innocence of the bank in this respect is entirely overwhelming, as we shall endeavor to show.

About the 14th of January, 1871, Miller borrowed $4,000 from the First National Bank, and gave his note, with W. J. T. Wallace as security, maturing in ninety days. When it matured, the signers asked to have it renewed, and it was renewed, and renewed a second time. (Page 22.) This is certainly no evidence of insolvency. If it be so, almost every borrower from a bank is to be considered legally insolvent, for the custom of renewal of bank notes is in the West almost universal, so long as the security is satisfactory. While this loan was standing, Miller continued his business with the bank, checking upon it almost every day, and keeping his account good by constant deposits. About the first of September, 1871, he wished to borrow about $2,000 or $2,500 to buy stock, not for the purpose of immediate shipment, but to put upon his farm for feeding. He proposed to Mr. Hubbard, the cashier of the bank, to borrow that amount and give a deed of trust on his farm for the sum thus borrowed, and for the $4,000 note, taking up the note, which would not be due, under the last renewal, until October 30th, 1871. (Page 22.) He also said that he thought he could borrow $10,000 in

Galesburg for a term of years, by giving security on his farm, and if he could do that, it would pay off all his debts, including what he owed the bank. He therefore did not wish the deed of trust he was about to execute to be put on record for a few days, until he could ascertain whether he could borrow the $10,000 in Galesburg.

He told the cashier, at that time, he was only owing $10,000, including the debt due the bank, and was worth $30,000. Of course, the cashier believed him, for he had been doing a large business with the bank, for over three years, having borrowed and paid over $200,000, and had always been found worthy of trust. He drew the $2,500, in different sums, by check, and executed the note for $6,500, and the deed of trust, on the 16th of September, but requested the cashier to withhold the deed from record for a few days, as he hoped to raise the $10,000 in Galesburg. He did not succeed in doing so, and about ten days after its execution, the cashier caused the trust deed to be recorded. The cashier swears that at the time of this arrangement he knew of no indebtedness from Miller to the banks or other persons in Galesburg, nor did he know of any debts due from him anywhere, except the amount due the bank, and less than three thousand dollars, due in Monmouth. His bank debt was $4,000, apart from the $2,500 then borrowed, and which would be represented by newly bought stock upon his farm, and this $4,000, added to the $3,000 due elsewhere, would make $7,000 of indebtedness, all told, against a farm, and stock upon it, worth more than $20,000. Assuredly here was no cause for the bank's believing him to be insolvent, and the cashier swears he had no idea of such a fact. The best evidence that the bank did not so regard him is that it continued to cash his checks, to November 11th—about two months—to the amount of about $7,000, all of which he paid.

In order to give the testimony of the cashier in his own

words, we extract the following, from pages 56, 57 and 58 of the printed record.

"Int. 13. Examine the papers now shown to you, "marked Exhibits D and E, attached to the deposition of "John S. Miller in this case, and state how they came to "be executed, and for what?

"A. We had a note of his of four thousand dollars "that we were carrying along, and which we had renewed "several times at least. I don't remember how many.

"He wanted more money for the purpose of buying "stock to put on his farm (from two thousand to twen- "ty-five hundred dollars), and proposed, if I would advance "him that, that he would take up the four thousand dollar "note and give us a trust deed, or mortgage, to secure "the whole, which I did, having advanced him the twen- "ty-five hundred dollars, or thereabouts, a short time pre- "vious to the execution of this.

"Int. 14. At the time the twenty-five hundred dollars, "or about that amount, was advanced to Miller, what, if "anything, was said at that time about his securing it by "him?

"A. When this advance of two thousand to twenty- "five hundred was made him, it was to be repaid in a few "days, or short time ('few days' was the expression,) "by money that he expected to obtain in Galesburg; and, "if not, then the mortgage was to be given, which we "now have.

"Int. 15. For what purpose did he say he wanted this "money?

"A. For the purpose of buying stock to put on his "farm.

* * * * * * * * * * *

"Int. 30. What was said, if anything, at the time the

" trust deed was given, or about that time, about his in-
" debtedness ?

" A. He wanted to get, or borrow on long time, ten
" thousand dollars. He said that would clear him up.

" Int. 31. Did Miller tell you, on the day the trust deed
" was executed, or the day before, in the First National
" Bank of Monmouth, in the city of Monmouth, that he
" was worth thirty thousand dollars, and did not owe over
" ten thousand, or words to that effect?

" A. He did tell me that. I think it was a day or two
" before trust deed was executed he told me that.

" Int. 32. Was it at the time he made arrangements with
" you to draw out the two thousand or twenty-five hundred
" dollars, and was to give a trust deed for the same,
" together with the four thousand dollar note ?

" A. Yes; when he made arrangements to give me the
" trust deed, that was the time he told me.

" Int. 33. When he got the two thousand or twenty-
" five hundred dollars to buy stock to put on his farm,
" what, if anything, was said in the arrangement about his
" securing that sum ?

" A. This two thousand or twenty-five hundred dol-
" lars was drawn out at different times, with the under-
" standing that it was for the purchase of stock for this
" farm, and was to be replaced with money that he ex-
" pected to get; and in the event that he did not get it, he
" was to give us a mortgage or trust deed.

" Int. 34. What, if anything, was said at the time of
" executing the note and trust deed about recording trust
" deed ?

" A. He did not want it put on record, for he was
" sure he would have the money in the course of a couple
" of weeks, and did not want to be to the expense.

" Int. 35. Where did he say that he expected to get the " money ?

" A. In Galesburg; ten thousand dollars.

" Int. 36. On what time ?

" A. On several years time; long time.

" Int. 37. What rate of interest ?

" A. Ten per cent.

" Int. 38. Why did he say he wanted to get the money " on long time, and not get it at the bank ?

" A. The bank could not loan him the amount desired " and carry it along for him.

" Int. 39. State what you know of Miller's indebtedness " at the time of executing the note and the trust deed " marked ' Exhibits D,' and ' E,' respectively, on the 16th " day of Sept. 1871?

" A. I knew nothing of his indebtedness, aside from " what he owed us, and two or three small notes which I " had got for him of other parties.

" Int. 40. State the amount of Miller's indebtedness, or " as near as you can, that you know of at that time, aside " from what he owed the First National Bank of Mon- " mouth?

" A. I think it was less than three thousand dollars.

" Int. 41. State what, if anything, you knew at that " time, of his borrowing money of the banks in Galesburg, " Ills., or whether or not you know of his being in debt to " any parties in Galesburg, Ills.?

" A. I know nothing of his indebtedness to banks in " Galesburg.

" Int. 42. When did you first learn of his indebtedness " to Galesburg banks, or parties residing there?

" A. I think it a month or six weeks after the trust

"deed was given. That is my impression now—some six "weeks, perhaps six weeks.

"Int. 43. Did you promise to give Miller three hundred "dollars if he would execute the note and trust deed re- "ferred to in Miller's deposition, Exhibits D and E?

"A. I did not.

"Int. 44. Were you acquainted with Miller's financial "standing in the neighborhood at the time the trust deed "and note marked 'Exhibits D' and 'E,' attached to Mil- "ler's deposition were executed?

"A. I think I was.

"Int. 45. State whether his financial standing was good "or bad at that time?

"A. It was on an average of other business men, so far "as I know.

"Int. 46. Did you know of his being sued prior to that "time, on any of his indebtedness?

"A. I believe not.

"Int. 47. You had borrowed money for him from other "parties besides the bank, had you not?

"A. I had.

"Int. 48. How was that indebtedness met by him— "promptly or otherwise?

"A. He always paid or renewed, just as the parties de- "sired, so far as I know or now remember.

"Int. 49. State whether or not, at the time of execution "of the trust deed and note, on the 16th day of Septem- "ber, 1871, you knew that he was insolvent?"

(Objected to.)

"A. I did not have any idea of such a fact."

The cashier further swears, (pages 63 and 64 of printed record), that he heard no reports derogatory to Miller's

financial standing; that he made diligent inquiry; that Miller was reputed to be worth, "at least, thirty thousand "dollars over his indebtedness," and he received that information from "farmers and men living in his neighbor-"hood."

The testimony of Mr. Laferty, the president of the bank, confirms that of the cashier. He swears, (page 50 of record), that he "did not know until the middle of "October about the indebtedness of John S. Miller." He further swears that he considered his financial standing good, and he had no reason for believing him insolvent. He believed him to be good for all he owed, (pages 52 and 53.)

Mr. Young, the book-keeper of the bank, swears, (p. 65 of printed record,) that Miller represented to the cashier, at the time of the execution of the deed of trust, that "$10,000 would clear up his indebtedness entirely."

Stevenson, the bank teller, testifies to the same thing, (page 66).

Mr. Jenks was one of the bank directors. He was also a large lumber dealer, and had between $55,000 and $60,000 in money loaned in Warren County. He was, consequently, in a position to know the financial reputation of persons with whom he dealt. He testifies, (page 75,) that Miller's financial standing was "undoubted," as far as he knew. He gave the strongest proof of his own confidence in Miller, for he swears, (page 76,) that he loaned Miller, in August, 1871, five hundred dollars, "without security, "or even a note or due bill, or anything." To a man whose business was, in part, the loaning of money, this was about as strong evidence as could be given of *his* belief in the financial standing of Miller. He also testifies that he had previously loaned Miller sums of money ranging from $500 to $1,500, in the same way.

Miller himself, desirous, as he expresses himself to be, of setting aside the deed of trust, swears, on page 31 of the printed record, that he did not inform any of the officers of the bank, prior to the execution of the trust deed, that he was indebted to any person or banking corporation in Galesburg.

This is all the substantial testimony bearing upon the question whether the bank knew, or had reason to believe Miller was insolvent. We submit it shows, beyond any contradiction, that it had no such knowledge, nor any reason to suspect his insolvency. The evidence in behalf of the bank is overwhelming. The only thing to controvert it, upon which the counsel for appellant rely, is the testimony of one Gibson, to the effect that Spriggs, a director of the bank, told him they had got suspicious of Miller, and therefore required the deed of trust. But Spriggs, being called, swears, (page 68 of printed record,) he never said so, and "there was nothing said about 'suspicion' at all."

We respectfully submit, upon this evidence, there is not the slightest ground for reversing the decree of the Circuit Court. It is proven beyond controversy that the bank, being a creditor of Miller for $4,000, at his request, loaned him $2,500 more, and took the deed of trust for security, believing him to be worth $30,000, according to his own assurance, and not knowing that he owed any debts, exceeding $3,000, besides that due the bank. His credit was good in the community. The cashier of the bank inquired, and was told by his neighbors, he was worth $30,000. They had done a large business with him for three years, amounting to over two hundred thousand dollars, and had proved him worthy of trust. On what possible ground can it be said this deed was a fraud on the bankrupt law?

But counsel for appellant insist he was known to the

bank to be insolvent, because he did not pay his indebtedness as it matured, referring, we suppose, to the fact that he procured the $4,000 note to be twice renewed. We respectfully submit that learned counsel have wholly misconstrued the language of this court. It is not possible this court has intended to be understood as deciding that the borrower from a bank is to be considered as legally insolvent merely because he pays up the interest, and gets his note renewed at its maturity. Miller could have paid that note at its maturity by going upon the street, and offering his farm for sale at half its value, or by applying to Mr. Jenks, or some other lender of money for a loan, with security upon his farm. True, he could not have paid all his debts, but he could have paid all of which the bank had any knowledge; and thereupon the bank officers had not the slightest reason to consider him insolvent, in any sense that can be given to that term. If this deed of trust is to be set aside, then no man, nor corporation, can safely favor his debtor by giving time on a matured debt, and taking a deed of trust; but the debtor must at once be ground into powder by the processes of the law.

II.

We cannot suppose this decree will be reversed to any extent; but if it should be, we submit the deed of trust must be held valid to the extent of $2,500 out of the $6,500. Only the sum of $4,000 was a precedent debt. The sum of $2,500 was advanced upon the faith of the deed of trust, as shown in the testimony of Mr. Hubbard, which we have quoted.

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C. B. LAWRENCE, *Of Counsel.*